

Residential Tenancies Tribunal

Application [REDACTED]

Decision 23-0397-00

John Cook
Adjudicator

Introduction

1. The hearing was called at 11:16 AM on 13 June 2023 via teleconference.
2. The applicant, [REDACTED] was represented at the hearing by [REDACTED]. The respondent, [REDACTED] was not in attendance.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for payment of rent in the amount of \$2284.52, and
 - An order for vacant possession of the rented premises

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this case is section 19 of the *Residential Tenancies Act, 2018* and rule 29 of the *Rules of the Supreme Court, 1986*.

Preliminary Matters

6. The tenant was not present or represented at the hearing and I was not able to reach her by telephone. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, where the respondent fails to attend the hearing, Rule 29.11(1) states

that the hearing may proceed in the respondent's absence so long as he has been properly served. The landlord submitted an affidavit with his application stating that he had served the tenant with notice of the hearing, by registered mail, on 12 May 2023, and the associated tracking history shows that it was signed for by the tenant on 15 May 2023. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.

7. The landlord amended his application and stated that he was now seeking a total of \$3336.52 in rent.

Issue 1: Rent - \$3336.52

Relevant Submissions

8. The landlord stated that he had entered into monthly rental agreement with the tenant on 19 November 2021. The agreed rent is set at \$526.00.
9. With his application, the landlord submitted a copy of his rent records showing the payments he had received from the tenant since she had moved into the unit. These records show that the tenant had been carrying rental arrears since she moved in, and in September 2022, they had climbed over \$2500.00. By November 2022, she had the balance back down to \$254.52, but since then she has only made 1 payment—\$600.00 on 20 January 2023, which left her with a balance owing of \$706.52. No rent was received for the next 5 months, and the balance now stands at \$3336.52. The landlord is seeking an order for a payment of that amount.

Analysis

10. I accept the testimony and evidence of the landlord in this matter, and I agree with him that the tenant had not been paying her rent as required and that she has only made 1 payment in the last 7 months.
11. As the landlord is also seeking an order for vacant possession of the rented premises, I find that he is entitled to a payment of rent to the day of the hearing and a per diem thereafter. I calculate the amount owing to be \$3035.29 (\$2810.52 for the period ending 31 May 2023 and \$224.77 for June 2023 (\$526.00 per month x 12 months = \$6312.00 per year ÷ 365 days = \$17.29 per day x 13 days)).

Decision

12. The landlord's claim for a payment of rent succeeds in the amount of \$3035.29.

13. The tenant shall pay a daily rate of rent in the amount of \$17.29, beginning 14 June 2023, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Vacant Possession of the Rental Premises

Relevant Submission

14. With his application, the landlord submitted a copy of a termination notice which he stated he had both sent to the tenant, by registered mail, and posted on her door, on 06 April 2023. The tracking history for the registered mail shows that it was signed for by the tenant on 11 April 2023. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* (notice where failure to pay rent) and it had an effective termination date of 31 May 2023.
15. The landlord stated that the tenant has not moved out as required and he is seeking an order for vacant possession of the rented premises.

Analysis

16. The relevant subsections of s.19 of the *Residential Tenancies Act, 2018* state:

Notice where failure to pay rent

19. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),

...

(b) where the residential premises is

(i) rented from month to month,

(ii) rented for a fixed term, or

(iii) a site for a mobile home, and

the amount of rent payable by a tenant is overdue for 5 days or more, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 10 days after the notice is served on the tenant.

(2) Notwithstanding subsection (1), where the tenant pays the full amount of the overdue rent, including a fee under section 15, before the date specified in the notice under paragraph (1)(a) or (b), the rental agreement is not terminated and the tenant is not required to vacate the residential premises.

17. According to the landlord's rent records, on 06 April 2023, when the termination notice was issued, the tenant was in arrears in the amount of \$2284.52, and she had been in arrears since January 2022. No payments were made after the notice was issued, and since then the rent for May and June 2023 has also come due.
18. As the notice meets all the requirements set out in this section of the *Act*, and as it was properly served, it is valid.

Decision

19. The landlord's claim for an order for vacant possession of the rented premises succeeds.
20. The tenant shall pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

Issue 3: Hearing Expenses

21. The landlord paid a fee of \$20.00 to file this application. As his claim has been successful, the tenant shall pay this hearing expense.

Summary of Decision

22. The landlord is entitled to the following:

- A payment of \$3055.29, determined as follows
 - a) Rent Owing\$3035.29
 - b) Hearing Expenses.....\$20.00
 - c) Total Owing to Landlord\$3055.29
- A payment of a daily rate of rent in the amount of \$17.29, beginning 14 June 2023 and continuing to the date the landlord obtains possession of the rental unit,
- An order for vacant possession of the rented premises,
- The tenant shall also pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

20 June 2023

Date


John R. Cook
Residential Tenancies Tribunal