

Residential Tenancies Tribunal

Application [REDACTED]

Decision 23-0399-00

John Cook
Adjudicator

Introduction

1. The hearing was called at 1:51 PM on 19 June 2023 via teleconference.
2. The applicant, [REDACTED] was represented at the hearing by [REDACTED]. The respondent, [REDACTED] was not also attendance.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for payment of rent in the amount of \$8379.00, 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 are sections 19 and 35 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

6. The landlord amended his application and stated that he was now seeking a total of \$5772.00 in rent.

Issue 1: Rent - \$5772.00

Relevant Submissions

The Landlord's Position

7. The landlord stated that he had entered into a monthly rental agreement with the tenant on 15 October 2014, and a copy of that executed agreement was submitted with the application. The current rent is set at \$697.00 per month.
8. The landlord submitted rent records with his application showing the payments he had received from the tenant since February 2019, which was the last time the tenant had a zero-balance. By January 2021, the arrears had accrued to over \$1800.00, and they have been steadily increasing since. At the end of January 2023, the arrears stood at \$6288.00, and the tenant failed to make any payments for the months of February, March, April, or May 2023, leaving her with a balance of \$9076.00.
9. On 01 June 2023, rent again came due, and the landlord testified that on the following day, 02 June 2023, the tenant made a payment of \$4000.00, reducing the balance to \$5772.00. He is seeking an order for a payment of that amount.

The Tenant's Position

10. The tenant claimed that there was something wrong with her bank account, and she was under the impression that her rent had been regularly deducted from her account. When she realized the error, she gave the landlord a payment of \$4000.00 in June 2023 to cover the months that she had missed in 2023.
11. The tenant did not dispute the landlord's records and she acknowledged that she still owes the landlord \$5772.00.

Analysis

12. There is no dispute that the tenant had not been paying her rent as required and that she is currently in arrears in the amount of \$5772.00. On my reckoning, though, I calculate that the amount owing is \$5773.00 (\$8379.00 owing for the period ending 30 April 2023, plus \$697.00 for each of May and June 2023, less the payment of \$4000.00 made on 02 June 2023).
13. In any case, 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 \$5511.48 (\$9076.00 for the period ending 31 May 2023 less the credit of \$3564.52cr for June 2023 (\$697.00 per month x 12 months = \$8364.00 per year ÷ 365 days = \$22.92 per day x 19 days = \$435.48, less the payment of \$4000.00 made on 02 June 2023)).

Decision

14. The landlord's claim for a payment of rent succeeds in the amount of \$5511.48.
15. The tenant shall pay a daily rate of rent in the amount of \$22.92, beginning 20 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

The Landlord's Position

16. 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, on 28 March 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 30 April 2023.
17. 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.

The Tenant's Position

18. The tenant stated that she had probably received this termination notice, though she couldn't be sure.

Analysis

19. 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.

20. The tracking history associated with the termination notice shows that that notice was processed at the post office on 29 March 2023, and a notice card was left for the tenant on that date. According to that tracking history, that notice was not collected by the tenant and it was eventually returned to the landlord. Section 35 of the *Residential Tenancies Act, 2018* states that where a notice is sent by registered mail, it is considered served on the 5th day after mailing—so in this case, it is deemed served on 03 April 2023.
21. According to the landlord's rent records, on 03 April 2023, when the termination notice is deemed to have been served, the tenant was in arrears in the amount of \$8379.00, and she had been in arrears since March 2019. No payments were made prior to the termination date of 30 April 2023 and the balance has not been brought to zero.
22. 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

23. The landlord's claim for an order for vacant possession of the rented premises succeeds.
24. 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

25. 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

26. The landlord is entitled to the following:

- A payment of \$5531.48, determined as follows
 - a) Rent Owing\$5511.48
 - b) Hearing Expenses.....\$20.00
 - c) Total Owing to Landlord\$5531.48
- A payment of a daily rate of rent in the amount of \$22.92, beginning 20 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.

23 June 2023

Date


John R. Cook
Residential Tenancies Tribunal