

Residential Tenancies Tribunal

Application 2023 No. 465NL

Decision 23-0465-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:45 PM on 28 June 2023 via teleconference.
2. The applicant, [REDACTED] hereinafter referred to as “the landlord”, attended the hearing. The respondent, [REDACTED] hereinafter referred to as “the tenant”, 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 \$520.00, 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 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 unable to reach him by telephone at the commencement of the hearing. 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 the claim and notice of the hearing 10 clear days prior to the hearing date and, where the

respondents fail 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 the tenant was served with the application, by text-message, on 14 June 2023, and a copy of that text-message was also submitted with his application. 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 his absence.

Issue 1: Rent Owing - \$520.00

Relevant Submissions

7. The landlord stated that she had entered into a monthly rental agreement with the tenant in December 2021. The agreed rent is set at \$600.00 per month, and the landlord stated that the tenant had also paid a \$275.00 security deposit.
8. The landlord testified that the tenant's rent was paid and up-to-date for the period ending 31 May 2023. He claimed that a housing coalition had also paid him, on the tenant's behalf, \$80.00 for the first 4 days of June 2023, but no other payments for rent for that month have been received. The landlord is seeking an order for the remaining \$520.00 owing for June 2023.

Analysis

9. I accept the testimony and evidence of the landlord in this matter, and I find that the tenant has not paid his full rent for June 2023.
10. 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 date of the hearing and a per diem thereafter. I calculate the amount owing to be \$472.44 ($\$600.00 \text{ per month} \times 12 \text{ months} = \$7200.00 \text{ per year} \div 365 \text{ days} = \$19.73 \text{ per day} \times 28 \text{ days, less the payment of } \80.00)).

Decision

11. The landlord's claim for a payment of rent succeeds in the amount of \$472.44.
12. The tenant shall pay a daily rate of rent in the amount of \$19.73, beginning 29 June 2023, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Vacant Possession of Rented Premises

Relevant Submissions

13. With his application, the landlord submitted a copy of a termination notice which he stated he had sent to the tenant, by text-message, on 12 June 2023. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 23 June 2023.
14. 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

15. Section 19 of the *Residential Tenancies Act, 2018* states:

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.

16. According to the landlord's testimony, on 12 June 2023, the day the termination notice was issued, the tenant was in arrears in the amount of \$520.00, and he had been in arrears since the beginning of that month. No payments were made by the tenant after the notice was issued.
17. As the notice meets all the requirements set out in this section of the *Act*, and as it was properly served, it is a valid notice.

Decision

18. The landlord's claim for an order for vacant possession of the rented premises succeeds.
19. 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: Security Deposit

20. The landlord stated that the tenant had paid a security deposit of \$275.00 when this tenancy began. As the landlord's claim has been successful, he shall retain that deposit as outlined in this decision and attached order.

Summary of Decision

21. The landlord is entitled to the following:
 - A payment of \$197.44, determined as follows:
 - a) Rent Owing\$472.44
 - b) LESS: Security Deposit..... (\$275.00)
 - c) Total.....\$197.44
 - An order for vacant possession of the rented premises,
 - A payment of a daily rate of rent in the amount of \$19.73, beginning 29 June 2023 and continuing to the date the landlord obtains vacant possession of the rental unit,
 - 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.

July 4, 2023

Date

John R. Cook
Residential Tenancies Tribunal