

Residential Tenancies Tribunal

Application 2023 No. 569NL

Decision 23-0569-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:15 AM on 20 July 2023 via teleconference.
2. The applicant, [REDACTED] hereinafter referred to as “the landlord”, attended the hearing. The respondents, [REDACTED] hereinafter referred to as “the tenants”, were not in attendance.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for payment of rent in the amount of \$700.00,
 - An order for a payment of late fees in the amount of \$75.00, 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 tenants were not present or represented at the hearing and there was no telephone number where they could be reached. 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 respondents' absence so long as they have been properly served. The landlord submitted an affidavit with his application stating that he had personally served the tenants on 09 July 2023 at the rental unit. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.

7. The landlord amended his claim at the hearing and stated that he was no longer seeking an order for rent or late fees.

Issue 1: Vacant Possession of Rented Premises

Relevant Submissions

8. The landlord stated that he had entered into a 1-year, fixed-term lease with the tenants on 01 May 2020. The agreed rent is set at \$1050.00 per month, and the landlord testified that the tenants had paid a security deposit of \$730.00.
9. The landlord testified that the tenants' rent was paid, and up-to-date for the period ending 31 May 2023, but the tenants had failed to pay June's rent on 01 June 2023, the day it was due. Accordingly, on 07 June 2023, the landlord personally served the tenants with a termination notice, and a copy of that notice was submitted with the landlord's application. That notice was issued under section 19 of the *Residential Tenancies Act, 2018*, and it had an effective termination date of 18 June 2023.
10. After the notice was issued, the landlord stated that the tenants paid a portion of the rent that was owing, \$350.00, on either 08 or 09 June 2023, and a second payment of \$300.00 on either 15 or 16 June 2023. The landlord testified that he received the remaining rent, \$400.00, on 22 or 23 June 2023, as well as a payment of \$25.00 towards the late fees he had assessed.
11. The landlord stated that this was not the only time the tenants were late with their rent, and he pointed to 2 other termination notices he had issued to them, one in January 2023 and one in May 2023, given for the same reason.
12. The landlord stated that the tenants have not moved out, as required, and he is seeking an order for vacant possession of the rented premises.

Analysis

13. 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.

14. According to the landlord's testimony, on 07 June 2023, the day this 3rd termination notice was issued, the tenants were in arrears in the amount of \$1050.00 and they had been in arrears since the beginning of that month, a period of exactly 5 clear days.
15. According to the landlord's testimony, although he had received some partial payments towards rent after the notice was issued, the tenants still had an outstanding balance of \$400.00 on 18 June 2023, the termination date set out in the notice.
16. As the full amount of the rent was not paid by 18 June 2023, and as the notice meets all the other requirements set out in this section of the Act, it is a valid notice.

Decision

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

18. The tenants 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.

24 July 2023

Date



John R. Cook
Residential Tenancies Tribunal