

Residential Tenancies Tribunal

Application 2023 No. 641NL
Application 2023 No. 715NL

Decision 23-0641-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:08 AM on 23 August 2023 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the tenant", attended the hearing. The respondent, [REDACTED], hereinafter referred to as "the landlord", was also in attendance.

Issues before the Tribunal

3. The tenant is seeking a determination of the validity of a termination notice issued to her on 07 July 2023.
4. The landlord is seeking the following:
 - A determination of the validity of a termination notice he had issued the tenant on 07 July 2023,
 - An order for payment of rent in the amount of \$1200.00,
 - 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

5. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
6. Also relevant and considered in this case is section 19 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

7. The landlord amended his application at the hearing and stated that he was now seeking a total payment of rent in the amount of \$1650.00.

Issue 1: Rent Owing - \$1650.00

Relevant Submissions

The Landlord's Position

8. The landlord stated that he had entered into a monthly rental agreement with the tenant, commencing 01 October 2020, and a copy of that executed agreement was submitted with his application. The agreed rent was set at \$600.00 per month, and it was due in installments of \$300.00 on the 1st and 15th day of each month. The landlord also testified that the tenant had paid a \$300.00 security deposit on 16 September 2020.
9. The landlord submitted rent records with his application showing the payments the tenant had made since October 2021. The landlord pointed out that the tenant had failed to pay her semi-monthly rent installment on 5 separate occasions—on 15 October 2021, 15 April 2023, 01 July 2023, 01 August 2023 and 15 August 2023. He also pointed out that on 01 February 2021, he had only received \$200.00 of the \$300.00 owing, and on 16 February 2021, he had only received \$250.00.
10. The landlord calculates that the tenant owes him \$1650.00 in rent, and he is seeking an order for a payment of that amount.

The Tenant's Position

11. The tenant testified that she had moved into the unit, with another person, in the spring of 2019, and in October 2020 she took over as sole leaseholder and signed the submitted rental agreement.
12. The tenant did not dispute the landlord's record of payments and she acknowledged that he owes \$1650.00. She claimed that the reason she had failed to pay her rent on the occasions identified by the landlord was because her electricity bills were very high during those months, and she did not have the income to cover these bills and her rent.

Analysis

13. As the tenant did not contest the landlord's claim for rent, I find that that claim succeeds.

14. 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 \$1503.79 (\$1050.00 owing for the period ending 31 July 2023 and \$453.79 for August 2023 (\$600.00 per month x 12 months = \$7200.00 per year ÷ 365 days = \$19.73 per day x 23 days)).

Decision

15. The landlord's claim for a payment of rent succeeds in the amount of \$1503.79.
16. The tenant shall pay a daily rate of rent in the amount of \$19.73, beginning 24 August 2023, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Late Fees - \$75.00

17. The landlord has assessed a late fee of \$75.00.

Analysis

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

Fee for failure to pay rent

15. (1) Where a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister.

The minister has prescribed the following:

Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed:

(a) \$5.00 for the first day the rent is in arrears, and

(b) \$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00.

19. As the tenant has been in arrears since 16 October 2021, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

20. The landlord's claim for late fees succeeds in the amount of \$75.00.

Issue 3: Validity of Termination Notice

Issue 4: Vacant Possession of Rented Premises

Relevant Submissions

The Landlord's Position

21. With his application, the landlord submitted a copy of a termination notice which he stated he had posted to the tenant's door on 07 July 2023. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 19 July 2023.
22. 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

23. The tenant acknowledged receiving this notice on 07 July 2023.
24. The tenant stated that she had vouched for another tenant who was looking to move into the complex. She claimed that the landlord has an issue with this person she had vouched for, and not only does he want to evict that person, he also wants to evict her as well.

Analysis

25. 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.

26. According to the landlord's records, on 07 July 2023, the day the termination notice was issued, the tenant was in arrears in the amount of \$1050.00, and she had been in arrears since 2021. The rent of \$300.00 came due again on 15 July 2023, and although that installment was paid by the tenant, she still remained in arrears in the amount of \$1050.00 on 19 July 2023, the expiration date of the notice.
27. 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

28. The landlord's claim for an order for vacant possession of the rented premises succeeds.
29. 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 5: Security Deposit

30. The landlord stated that the tenant had paid a security deposit of \$300.00 on 16 September 2020. As the landlord's claim has been successful, he shall retain that deposit as outlined in this decision and attached order.

Issue 6: Security Deposit

31. 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

32. The landlord is entitled to the following:
 - A payment of \$1298.79, determined as follows:
 - a) Rent Owing\$1503.79
 - b) Late Fees\$75.00
 - c) Hearing Expenses.....\$20.00

d) LESS: Security Deposit..... (\$300.00)

e) Total \$1298.79

- An order for vacant possession of the rented premises,
- A payment of a daily rate of rent in the amount of \$19.73, beginning 24 August 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.

28 August 2023

Date

[Redacted]
John R. Cook
Residential Tenancies Tribunal