

Residential Tenancies Tribunal

Application 2023 No. 655 [REDACTED]

Decision 23-0655-00

John Cook
Adjudicator

Introduction

1. The hearing was called at 9:16 AM on 22 August 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 \$4444.88, 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 she has

been properly served. The landlord submitted an affidavit with her application stating that she had served the tenant with notice of the hearing by registered mail, and the associated tracking history shows that it was signed for by the tenant on 08 August 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 her application and stated that she was now seeking a total of \$4840.88 in rent.

Issue 1: Rent - \$4840.88

Relevant Submissions

8. The landlord stated that she had entered into monthly rental agreement with the tenant on 01 September 2010, and a copy of the lease that was renewed in 2014 was submitted with her application. The current rent is set at \$396.00.
9. With her application, the landlord submitted a copy of her rent records showing the payments she had received from the tenant since June 2021, when she last had a zero-balance. According to these records, the tenant was paying her rent sporadically, if at all, and the last payment she had made was in December 2022, leaving her with a balance of \$1928.88 at that time.
10. Besides these rent payments, these records show that the tenant had also received over 20 rent abatements, based on information that she had provided to the landlord concerning her income. However, the landlord stated that the tenant has lately cut off all contact with her, and the tenant has not responded to her requests for information about her income, so that she may receive further abatements.
11. Since December 2022, no rent has been paid, and even though the tenant had received over \$2600.00 in abatements, she is still carrying a balance of \$4840.88. The landlord is seeking an order for a payment of that amount.

Analysis

12. I accept the testimony and evidence of the landlord in this matter, and I agree with her that the tenant had not been paying her rent as required, and that she last received a payment from her in December 2022, leaving a balance owing, to the date of the hearing, of \$4840.88.
13. As the landlord is also seeking an order for vacant possession of the rented premises, I find that she 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 \$4731.32 (\$4444.88 for the period ending 31 July 2023 and \$286.44 for August 2023

(\$396.00 per month x 12 months = \$4752.00 per year ÷ 365 days = \$13.02 per day x 22 days)).

Decision

14. The landlord's claim for a payment of rent succeeds in the amount of \$4731.32.
15. The tenant shall pay a daily rate of rent in the amount of \$13.02, beginning 23 August 2023, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Vacant Possession of Rental Premises

Relevant Submission

16. With his application, the landlord submitted a copy of a termination notice which she stated she had sent to the tenant, by Xpresspost, on 05 June 2023. The tracking history shows that it was signed for by the tenant on 13 June 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 27 June 2023.
17. The landlord stated that the tenant has not moved out, as required, and she is seeking an order for vacant possession of the rented premises.

Analysis

18. 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.

19. According to the landlord's rent records, on 13 June 2023, when the termination notice was issued, the tenant was in arrears in the amount of \$4048.88, and she had been in arrears since June 2021. No payments were made after the notice was issued, and since then the rent for July and August 2023 has also come due.
20. 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

21. The landlord's claim for an order for vacant possession of the rented premises succeeds.
22. 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

23. With her application, the landlord submitted a hearing expense claim form, as well as a receipt for \$20.00 for the costs of filing this application, and a receipt for \$29.19 for the costs of serving the tenant by registered mail. As the landlord's claim has been successful, the tenant shall pay these hearing expenses.

Summary of Decision

24. The landlord is entitled to the following:
 - A payment of \$4780.51, determined as follows
 - a) Rent Owing\$4731.32
 - b) Hearing Expenses.....\$49.19
 - c) Total Owing to Landlord\$4780.51

- A payment of a daily rate of rent in the amount of \$13.02, beginning 23 August 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.

24 August 2023

Date


John R. Cook
Residential Tenancies Tribunal