

Residential Tenancies Tribunal

[REDACTED] Decision 20-0072-03

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:04 am on 27 November 2020 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing. He was represented at the hearing by [REDACTED] ('[REDACTED]').
3. The respondent, [REDACTED], hereinafter referred to as "the tenant", also participated in the hearing.

Issues before the Tribunal

4. The landlord is seeking 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*.

Issue 1: Vacant Possession of Rented Premises

Relevant Submissions

The Landlord's Position

7. The landlord and the tenant had entered into a monthly rental agreement in 2014. The rent at that time was set at \$450.00 per month and the landlord

testified that in 2019 he reduced that rent to \$400.00 per month. No security deposit was paid.

8. The landlord stated that the tenant had been in rental arrears for a number of years and he claimed that he had owed him thousands of dollars, all of which he had forgiven after the tenant had started paying his rent again. However, he stated that in the summer of 2020, the tenant again fell behind in his rent payments.
9. The landlord testified that the last rent he had received from the tenant was a payment of \$200.00 in June 2020. He claimed that no payments have been received since June 2020 through to November 2020.
10. The landlord did acknowledge that he had an agreement with the tenant that he would forgive him his rent payments for July and August 2020 if he did some work at the unit. He testified that he had supplied the tenant with materials to construct a set of cabinets, but he claimed that the tenant had only completed some minor parts of that project and it is still unfinished.
11. Because the tenant had not paid his rent, and because he had not carried out the agreed maintenance at the property, the landlord elected to terminate their rental agreement and on 30 August 2020 he issued the tenant a termination notice. A copy of that notice was submitted with his application. 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 September 2020.
12. The landlord stated that the tenant has not vacated the rented premises as required and he is seeking an order for possession of the property. ■ stated that the landlord had even given the tenant a \$500.00 payment so that he could find a new apartment, but he still continues to reside at the property.

The Tenant's Position

13. The tenant acknowledged receiving the termination notice and he acknowledged that he had not given the landlord any rent payments since June 2020.
14. With respect to the \$500.00 payment he had received from the landlord, he claimed that that money was not given to him so that he could find a new apartment, but rather it was a part agreement he had made with the landlord about the large appliances in the unit. He testified that the landlord had told him that he would pay him \$1000.00 if he left those appliances behind when he moved and the \$500.00 he received from him was a partial payment.
15. Regarding the agreement he had to build the cabinets, the tenant argued that he had done as much as he could with the supplies that had been provided to him and he stated that he had not heard from the landlord between the time he had made that agreement and when he had received the termination notice.

Analysis

16. 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.

17. There is no dispute that the tenant had not paid any money to the landlord for rent since June 2020.

18. There was also no dispute that there was some sort of agreement that the rent could be exchanged for the tenant's labour in constructing a set of cabinets. However, I was not persuaded that the tenant had lived up to that agreement and I accept the landlord's testimony that the work had not been carried out as agreed.

19. In any case, after the tenant received the termination notice on 30 August 2020, he still made no cash payments to the landlord for the outstanding rent and the construction project remained unfinished.

20. I conclude, therefore, that the tenant was in arrears for at least 5 days when the notice was issued and I also find that he remained in arrears when 30 September 2020 came around, the effective termination date set out in the notice

21. As the notice meets the requirements set out in section 19 of the *Act*, it is a valid notice.

Decision

22. The landlord's claim for an order for vacant possession of the rented premises succeeds.
23. 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 2: Hearing Expenses

24. As the landlord's claim has been successful, the tenant shall pay his hearing expense of \$20.00 for the costs of filing this application.

Summary of Decision

25. The landlord is entitled to the following:

- A payment of \$20.00, in compensation for the filing fee,
- 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.

02 December 2020

Date

John R. Cook
Residential Tenancies Tribunal