

Residential Tenancies Tribunal

Decision 20-0306-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:03 am on 28 September 2020 via teleconference.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED], hereinafter referred to as "the landlord". Also in attendance, representing the landlord, were [REDACTED] and [REDACTED].
3. The respondent, [REDACTED], hereinafter referred to as "the tenant", did not participate.

Issues before the Tribunal

4. The landlord is seeking the following:
 - a. An order for a payment of rent in the amount of \$5565.00;
 - b. An order for a payment of hearing expenses in the amount of \$20.00; and
 - c. 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* and rule 29 of the *Rules of the Supreme Court, 1986*.

Preliminary Matters

7. The tenant was not present or represented at the hearing and I was unable to reach her by telephone from the hearing room. 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) a respondent 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 the tenant was served with notice of the hearing by registered mail and the associated tracking history shows that that letter was delivered on 04 August 2020. The tenant has had 53 days to provide a response. 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.

8. The landlord amended the claim at the hearing and stated that she was now seeking \$2261.00 in rent arrears.

Issue 1: Rent - \$2261.00

Relevant Submissions

9. The landlord stated that she had entered into a monthly rental agreement with the tenant and [REDACTED] in 2003. In March 2018, [REDACTED] moved out of the unit and the tenant requested that she remain there as the sole leaseholder. Because the tenant was late in providing the landlord with her updated information regarding income, a new lease was not drafted until 26 June 2020.
10. According to the newly-drafted lease, the current rent is set at \$546.00.
11. The landlord submitted rent records with her application showing the payments she received from the tenant since November 2018, the last time she had a zero balance. These records show that the tenant was being charged \$1420.00 per month in rent for the period from 01 November 2018 through to 01 June 2020. That rate of rent was calculated, based on the landlord's housing policies, on the combined household income of both the tenant and [REDACTED].
12. Given that [REDACTED] moved out of the unit in March 2018, the landlord has adjusted the tenant's rent by crediting to her account an amount of \$15,081.00cr on 13 February 2020 and \$3696.00cr on 01 June 2020, to reflect the difference in the rent rates of \$1420.00 and \$546.00 during that period.
13. With respect to the payments that landlord had received from the tenant since November 2018, these records show that the tenant was typically paying between \$200.00 and \$450.00 per month, while in some other months, no rent has been paid at all. As such, rental arrears have been gradually accruing.

14. The landlord's updated records show that the tenant last made payments in August 2020, totalling \$450.00, and no rent was paid for September 2020. The landlord stated that the current amount now owing stands at \$2261.00

Analysis

15. I accept the landlord's claim that the tenant has not paid rent as required and her records show that the tenant is currently in arrears in the amount of \$2261.00.
16. As the landlord is also seeking an order for vacant possession of the rental unit, I find that she is entitled to a payment of rent to the date of the hearing and a per diem thereafter.
17. I calculate the rent owing to the date of the hearing to be \$2216.20 (\$1715.00 for the period ending 31 August 2020 and \$501.20 for September 2020 (\$546.00 per month x 12 months = \$6552.00 per year ÷ 366 days = \$17.90 per day x 28 days = \$501.20)).

Decision

18. The landlords' claim for a payment of rent succeeds in the amount of \$2216.20.
19. The tenant shall pay a daily rate of rent in the amount of \$17.90, beginning 29 September 2020, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Vacant Possession of Rented Premises

Relevant Submissions

20. With her application, the landlord submitted a copy of a termination notice which she stated she had sent to the tenant by registered mail on 09 March 2020. This notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 31 March 2020.
21. According to the landlord's rent records, the tenant was in arrears in the amount of \$1959.00 when the notice was issued and no payments were made prior to the effective termination date of the notice, 31 March 2020.
22. The tenant has not vacated the rented premises as required and the landlord is seeking an order for vacant possession of the rented premises.

Analysis

23. Section 35.(5) of the *Residential Tenancies Act, 2018* states that where a notice is sent by registered mail, it is considered to have been served on the recipient

on the fifth day after mailing. Accordingly, this termination notice is deemed to have been served on 14 March 2020.

24. 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.

25. Although the landlord's records show that the tenant was in arrears in the amount of \$1959.00 on 14 March 2020, these records also show that she was charged \$1420.00 on 01 March 2020. Given that the landlord had intended to be charging her \$546.00 per month, the actual rent owing should be calculated at \$1085.00.

26. Regardless, the tenant made no payments between 14 March and 31 March 2020 and the balance, however you look at it, remained unchanged.

27. As the tenant failed to pay off all the rental arrears by 31 March 2020 and as the notice meets the timeframe requirements set out in section 19 of the *Act*, 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 3: Hearing Expenses

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

Summary of Decision

31. The landlord is entitled to the following:

- A payment of \$2236.20, determined as follows
 - a) Rent Owing\$2216.20
 - b) Hearing Expenses.....\$20.00
 - c) Total Owing to Landlord\$2236.20
- A payment of a daily rate of rent in the amount of \$17.90, beginning 29 September 2020 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.

29 September 2020

Date

John R. Cook
Residential Tenancies Tribunal