

Residential Tenancies Tribunal

Decision 20-0327-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:07 pm on 27 August 2020 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing. His spouse, [REDACTED] ("[REDACTED"]"), also participated.
3. The respondent, [REDACTED], hereinafter referred to as "the tenant", did not participate 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* 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. 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 his application stating that he had served the tenant with notice of this hearing, by e-mail, on 14 August 2020. A copy of that e-mail was also submitted with his application and he pointed out that that e-mail address was provided to him by the tenant in the submitted rental agreement. The tenant has had 12 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.

Issue 1: Vacant Possession of the Rented Premises

Relevant Submissions

8. The landlord stated that he had entered into a monthly rental agreement with the tenant, commencing 01 June 2020, and a copy of the executed agreement was submitted with his application. The agreed rent was set at \$675.00 and it is acknowledged in the rental agreement that the tenant had paid a security deposit of \$300.00.
9. The landlord stated that the tenant had paid her rent for June and July 2020, on time, but no rent was received for August 2020.
10. As he had received no rent for August 2020, the landlord issued the tenant a termination notice on 10 August 2020, and 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 21 August 2020.
11. The landlord stated that the tenant had not moved out as required and he is seeking an order for vacant possession of the rented premises.

Analysis

12. 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.

13. According to the landlord's testimony, the tenant had been in rental arrears for 9 days when he issued the termination notice to her. I also accept the landlord's claim that no payments have been made since the notice was served on her.
14. As the notice meets the timeframe requirements set out in section 19 of the Act, it is a valid notice.

Decision

15. The landlord's claim for an order for vacant possession of the rented premises succeeds.
16. 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.

31 August 2020

Date

John R. Cook
Residential Tenancies Tribunal