

Residential Tenancies Tribunal

Decision 20-0333-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:04 pm on 09 September 2020 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing.
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 the following:
 - a. An order for a payment of rent in the amount of \$1500.00, and
 - b. 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 not able to reach him 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 he has been properly served. The landlord submitted an affidavit with his application stating that he had personally served the tenant with notice of this hearing on 14 August 2020 and the tenant has had 25 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 his absence.

8. The landlord amended his application at the hearing and stated that she was seeking an additional \$500.00 in rent for a total claim of \$2000.00.

Issue 1: Rent Owing - \$2000.00

Relevant Submissions

9. The landlord stated that he had entered into a monthly rental agreement with the tenant about 2 years ago. The agreed rent is set at \$500.00 per month.
10. The landlord submitted rent records with his application and he pointed out that he has received no rent for June, July, August and September 2020.
11. The landlord is seeking an order for a payment of rent in the amount of \$2000.00 for those 4 months (4 months x \$500.00 per month).

Analysis

12. I accept the landlord's claim that the tenant has not paid rent as required and that there rent has not been paid for the past 4 months. 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.
13. I calculate the amount owing to be \$1647.51 (\$1500.00 for the period ending 31 August 2020 and \$147.51 for September 2020 (\$500.00 per month x 12 months = \$6000.00 per year ÷ 366 days = \$16.39 per day x 9 days = \$147.51)).

Decision

14. The landlord's claim for a payment of rent succeeds in the amount of \$1647.51.
15. The tenant shall pay a daily rate of rent in the amount of \$16.39, beginning 10 September 2020, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Vacant Possession of the Rented Premises

Relevant Submissions

16. With his application, the landlord submitted a copy of a termination notice which he stated he had personally delivered to the tenant on 27 July 2020.
17. This termination notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 08 August 2020.
18. The landlord is seeking an order for vacant possession of the rented premises.

Analysis

19. 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.

20. According to the landlord's testimony and records, the tenant had been in rental arrears for almost 2 months when he issued the termination notice to him. No payments were made since the notice was served on the tenant and the rent owing has continued to accumulate.
21. As the notice meets the timeframe 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 3: 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 \$1667.51, determined as follows
 - a) Rent Owing\$1647.51
 - b) Hearing Expenses\$20.00
 - c) Total Owing to Landlord\$1667.51
 - A payment of a daily rate of rent in the amount of \$16.39, beginning 10 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.

11 September 2020

Date

John R. Cook
Residential Tenancies Tribunal