

Residential Tenancies Tribunal

Decision 20-0347-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:02 pm 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, was [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 \$4345.00.00;
 - 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 there was no telephone number where he could be reached. 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 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 31 August 2020. The tenant has had 27 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 the claim at the hearing and stated that she was now seeking \$3285.00 in rent arrears.

Issue 1: Rent - \$3285.00

Relevant Submissions

9. The landlord stated that she had entered into a monthly rental agreement with the tenant in November 2002. The current monthly rent is set at \$365.00.
10. On 21 November 2019 the landlord filed an application against the tenant (██████████) seeking an order for possession of the premises and a payment of rent in the amount of \$1460.00, for the period ending 30 November 2019. That application was mediated on 03 December 2019 and it was agreed that the tenant would pay of the arrears that had accrued to 31 December 2019 in monthly installments of \$35.00.
11. The landlord testified that the tenant has failed to comply with that mediated agreement. Additionally, since 01 January 2020 he has paid no rent to the landlord.
12. The landlord is seeking an order for a payment of rent for the last 9 months, the period from 01 January to 30 September 2020, totalling of \$3285.00.

Analysis

13. 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 \$3285.00.
14. 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.
15. I calculate the rent owing to the date of the hearing to be \$3255.16 (\$2920.00 for the period ending 31 August 2020 (\$365.00 per month x 8 months) and \$335.16

for September 2020 (\$365.00 per month x 12 months = \$4380.00 per year ÷ 366 days = \$11.97 per day x 28 days = \$335.16)).

Decision

16. The landlords' claim for a payment of rent succeeds in the amount of \$3255.16.
17. The tenant shall pay a daily rate of rent in the amount of \$11.97, 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

18. With her application, the landlord submitted a copy of a termination notice which she stated was posted to the tenant's door on 24 July 2020. This notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 05 August 2020.
19. According to the landlord's testimony and records, the tenant was in arrears in the amount of \$2555.00 when he received the notice and the tenant has made no payments since that time. Rent for August and September 2020 has now come due as well.
20. 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

21. 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.

22. As the tenant failed to pay off all the rental arrears by 05 August 2020 and as the notice meets the timeframe requirements set out in section 19 of the Act, it is a valid notice.

Decision

23. The landlord's claim for an order for vacant possession of the rented premises succeeds.
24. 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

25. 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

26. The landlord is entitled to the following:
 - A payment of \$3275.16, determined as follows
 - a) Rent Owing\$3255.16
 - b) Hearing Expenses.....\$20.00
 - c) Total Owing to Landlord\$3275.16
 - A payment of a daily rate of rent in the amount of \$11.97, 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.

30 September 2020

Date


John R. Cook
Residential Tenancies Tribunal