

Residential Tenancies Tribunal

[REDACTED] Decision 21-0027-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 11:14 am on 04 February 2021 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing. The respondent, [REDACTED], hereinafter referred to as "the tenant", did not participate.

Issues before the Tribunal

3. The landlord is seeking the following:
 - a. An order for a payment of rent in the amount of \$729.30, and
 - b. An order for vacant possession of the rented premises.

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. 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

6. A previous application ([REDACTED]) concerning this tenancy was heard on 14 January 2021 and as a result of that hearing, the landlord was awarded rent in the amount of \$3272.22 up to the date of the hearing. His claim for an order for possession of the rented premises did not succeed.
7. The tenant was not present or represented at the hearing and when I contacted her by telephone, she hung up. 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 served the tenant with notice of the hearing, by text-message, on 21 January 2021, and a copy of that text-message was also submitted with his application. The tenant has had 13 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 his application and stated that he was now seeking a payment of rent in the amount of \$2059.30.

Issue 1: Rent - \$2059.30

Relevant Submissions

9. The landlord stated that he had entered into a 1 year, fixed-term rental agreement with the tenant on 01 October 2020. The agreed rent was set at \$1330.00 per month and the landlord stated that the tenant had paid a security deposit of \$997.50.
10. As indicated in Preliminary Matters, above, as a result of a previous hearing, this Board found that the tenant was in rental arrears in the amount of \$3272.00 for the period ending 14 January 2021. The landlord stated that he is seeking the remaining rent of \$729.30 for January 2021 and he also testified that no rent for February 2021 has been paid either.

Analysis

11. I accept the landlord's claim that the tenant has paid no rent to him since the last hearing and that he is entitled to the remaining rent that is owing for January 2021. I also accept the landlord's claim that no rent has been paid for February 2021 either.
12. 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. I calculate the amount owing to be \$1067.62 (\$717.78 for January 2021 (\$1330.00 less \$612.22 already awarded in the previous hearing) and \$174.92 for February 2021 (\$1330.00 per month x 12 months = \$15960.00 per year ÷ 365 days = \$43.73 per day x 4 days = \$174.92)).

Decision

13. The landlord's claim for a payment of rent succeeds in the amount of \$1067.62.
14. The tenant shall pay a daily rate of rent in the amount of \$43.73, beginning 05 February 2021, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Vacant Possession of Rented Premises

Relevant Submissions

15. With his application, the landlord submitted a copy of a termination notice which he stated was sent to the tenant, by text-message, on 20 January 2021. A copy of that text-message was also submitted with his application.
16. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 31 January 2021.
17. The tenant has not moved out as required and the landlord is seeking an order for vacant possession of the rented premises.

Analysis

18. 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.

19. As it was determined in the previous hearing, the tenant had been in rental arrears since November 2020 and on 20 January 2021 she owed the landlord \$3990.00 in rent. No payments were made to the landlord after the notice was issued and since then rent for February 2021 has also come due.
20. As the termination notice meets all the requirements set out in section 19 of the Act, it is a valid notice.

Decision

21. The landlord's claim for an order for vacant possession of the rented premises succeeds.
22. 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: Security Deposit

23. The landlord stated that the tenant had paid a security deposit of \$997.50 on 20 September 2020. As the landlord's claim has been successful, he shall retain that security deposit as outlined in this decision and attached order.

Issue 4: 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 \$90.12, determined as follows:

a) Rent Owing	\$1067.62
b) Hearing Expenses.....	\$20.00
c) LESS: Security Deposit.....	(\$997.50)
d) Total.....	<u>\$90.12</u>

- An order for vacant possession of the rented premises,
- A payment of a daily rate of rent in the amount of \$43.73, beginning 05 February 2021 and continuing to the date the landlord obtains possession of the rental unit,
- 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 February 2021

Date


John R. Cook
Residential Tenancies Tribunal