

Residential Tenancies Tribunal

Application [REDACTED]

Decision 20-0514-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:03 pm on 25 January 2021 via teleconference.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED], hereinafter referred to as “the landlord”.
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 \$1320.00,
 - b. Authorization to retain the security deposit of \$300.00, 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 available 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 she had served the tenant with notice of the hearing by registered mail, and a copy of the associated tracking history shows that the notice was delivered on 02 December 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 his absence.

8. The landlord amended her application and stated that she was now seeking a payment of rent in the amount of \$2640.00.

Issue 1: Rent Owing - \$2640.00

Relevant Submissions

9. The landlord stated that she had entered into a monthly rental agreement with the tenant on 01 March 2016 and a copy of that agreement was submitted with the landlord's application. The current rent is set at \$660.00 per month and it is acknowledged in the rental agreement that the tenant had paid a security deposit of \$300.00
10. The landlord submitted rent records with her application showing the payments she had received from the tenant since January 2020. According to these records, the tenant last had a zero-balance in September 2020 and since that time he has paid no rent to the landlord.
11. The landlord is seeking an order for a payment of rent in the amount of \$2640.00 for the months of October 2020, November 2020, December 2020 and January 2021 (4 months x \$660.00 per month).

Analysis

12. I accept the landlord's claim that the tenant has not paid rent as required and that no rent has been paid for the last 4 months. As the landlord is also seeking an order for vacant possession of the rented premises, I find that she 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 \$2522.50 (\$1980.00 for the period ending 31 December 2020 (\$660.00 per month for October, November and December 2020) and \$542.50 for January 2021 ($\$660.00 \text{ per month} \times 12 \text{ months} = \$7920.00 \text{ per year} \div 365 \text{ days} = \$21.70 \times 25 \text{ days} = \542.50)).

Decision

14. The landlord's claim for a payment of rent succeeds in the amount of \$2522.50.
15. The tenant shall pay a daily rate of rent in the amount of \$21.70, beginning 26 January 2021, 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 her application, the landlord submitted a copy of a termination notice which she stated was taped to the tenant's front door on 07 October 2020.
17. This termination notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 19 October 2020.
18. The landlord stated that the tenant has not vacated the rented premises as required and she is seeking an order for vacant possession.

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.

20. According to the landlord's rent records, on 07 October 2020 the tenant was in arrears in the amount of \$660.00 and had been in arrears since the beginning of that month—a period of 5 days. No payments were made after the notice was

issued and since then the rent for November 2020, December 2020 and January 2021 has come due.

- 21. As the tenant had not paid off the arrears prior to 19 October 2020 and 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. The landlord submitted a hearing expense claim form a receipt showing that she had paid a fee of \$20.00 to file this application and she testified that she had spent \$11.64 to send the notice to the tenant by registered mail. As the landlord’s claim has been successful, the tenant shall pay these hearing expenses.

Issue 4: Security Deposit

- 25. The landlord stated that the tenant had paid a security deposit of \$300.00 on 01 March 2016 and receipt of that deposit is acknowledged in the submitted rental agreement. As the landlord’s claim has been successful, she shall retain the security deposit as outlined in this decision and order.

Summary of Decision

- 26. The landlord is entitled to the following:
 - A payment of \$2524.25, determined as follows
 - a) Rent Owing\$2522.50
 - b) Hearing Expenses.....\$31.64
 - c) **LESS: Security Deposit..... (\$300.00)**
 - d) Total Owing to Landlord\$2254.14

- A payment of a daily rate of rent in the amount of \$21.70, beginning 26 January 2021 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.

28 January 2021

Date



John R. Cook

Residential Tenancies Tribunal