

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0015-01

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 2:37 pm on July 21, 2021 via teleconference.
2. The applicant, [REDACTED]; hereinafter referred to as “the landlord,” attended by teleconference.
3. The respondent, [REDACTED]; hereinafter referred to as “the tenant,” also attended by teleconference.

Issues before the Tribunal

2. The landlord is seeking the following:
 - a. An order for a payment of rent in the amount of \$4900.00; and
 - b. An order for vacant possession of the rented premises.

Legislation and Policy

3. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
4. Also relevant and considered in this case are sections 19, 34 and 35 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

5. The landlord amended her application at the hearing stated that the total rent owing as of the date of the hearing was \$7000.00.

Issue 1: Rent - \$7000.00

Relevant Submissions

The Landlord's Position

6. The landlord stated that she had entered into a verbal, month-to-month rental agreement for [REDACTED] for \$700.00 per month. According to the landlord, the tenant had paid a security deposit of \$200.00.
7. The landlord provided a rental ledger ([REDACTED] #02) indicating that there has been no rent paid since October, 2020.
8. The landlord is seeking payment of \$7,000.00 for payment of rent owing.

The Tenant's Position

9. With respect to the security deposit, although the tenant doesn't remember the amount she had paid and although she doesn't have record of that payment, she believes that she had paid more than \$200.00.
10. The Tenant disputes the rental ledger and claims that money was paid with differing amounts that she previously discussed with the landlord to be placed against any monies owing to rent.
11. The Tenant agrees that from October to date of hearing no money has been paid to rent arrears and that \$7,000.00 is owing.

Analysis

12. With respect to the arrears being claimed, the landlord and tenant agree that rent is owed. Rent is required to be paid by the tenant for use and occupation of the rented premises, rent currently owed to the landlord is \$7,000.00.

Decision

13. The landlord's claim for a payment of rent succeeds in the amount of \$7000.00.

Issue 2: Vacant Possession of Rented Premises

Relevant Submissions

The Landlord's Position

14. The Landlord served a number of written notices to the Tenant with intent to evict due to rent not paid.

15. The Landlord initially stated that she served the Tenant the termination notice (█#04) on April 15, 2021 and later clarified that she delivered it on April 16, 2021.
16. The termination notice was issued under section 19 of the *Residential Tenancies Act, 2018* (notice of termination of rental agreement) dated April 16, 2021 with an effective termination date of April 28, 2021.
17. The Landlord acknowledges that she changed the date on the form to reflect the timelines outlined under section 18 of the *Residential Tenancies Act, 2018*. She states she delivered it on April 16, 2021.
18. The landlord stated that the tenant has not moved from the apartment as required and is seeking an order for vacant possession of the premises.

The Tenant's Position

19. The Tenant acknowledges that she is in possession of the Notice of Termination, however, the Notice is dated for April 15, 2021 with a termination date of April 25, 2021.
20. Tenant was asked to fax in her copy of the Notice of Termination and it was added to the evidence. (█#01)

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. The landlord acknowledged that had changed the dates on her termination notice from 15/25 April 2021 to 16/28 April 2021. She testified that she then delivered that modified notice to the tenant on 16 April 2021.
23. The tenant stated that she received the termination notice on 15 April 2021 with an effective termination date of 25 April 2021 and her copy of that notice was submitted after the hearing. That notice is identical to the one submitted by the landlord, except for the fact that the dates have been altered.
24. Based on that evidence, I cannot square the landlord' testimony, that she served the tenant with the altered notice on 16 April 2021, with the fact that the tenant is in possession of the unaltered notice, dated 15 April 2021. A more probable account is that the landlord served the tenant with the notice dated 15 April 2021, which would of course explain how she came to be in possession of it.
25. But that notice, the unaltered one, dated 15 April 2021, is not valid as it specifies a termination date of 25 April 2021 and is therefore only a 9-day notice, and not a 10-day notice, as required by section 19 of the *Act*. That is, section 19.(1)(b) states that a termination notice issued under this section must specify a termination date that is "not less than 10 days after the notice has been served on the tenant". That means that there have to be 10 full, or clear, days between the date the notice is issued and the date the tenant is required to vacate. In counting those days, one does not count the day the notice is issued or the date the tenant is required to move. Starting at 15 April and ending on 25 April 2021 only gives us 9 days.

Decision

26. The termination notice issued to the tenant on 15 April 2021 is not a valid notice.
27. The landlord's claim for an order for vacant possession of the rented premises does not succeed.

Summary of Decision

28. The tenant is required to pay the landlord \$7,000.00 for the rent owing.
29. The landlord's request for an order for vacant possession of rented premises does not succeed.

30 July 2021

Date



John R. Cook

Residential Tenancies Tribunal