

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0089-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:17 am on 06 April 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;
 - b. A determination of the validity of a termination notice;
 - c. An order for a return of possessions;
 - d. Authorization to retain the security deposit of \$400.00; and
 - e. An order for a payment of “other expenses” totalling \$540.00.

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*.

Preliminary Matters

6. The tenant was not present or represented at the hearing and I was unable 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) a respondent 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 had been served with notice of the hearing on 08 March 2021 and he has had 35 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.

7. The landlord amended her application at the hearing and stated that she was not, in fact, seeking an order for a return of possessions, but rather an order for vacant possession of the rented premises. She also stated that the total rent owing as of the date of the hearing was \$2140.00.

Issue 1: Rent - \$2140.00

Relevant Submissions

8. The landlord stated that she had entered into a 1-year, fixed-term rental agreement with the tenant commencing 01 November 2020 and a copy of the executed lease was submitted with her application. The agreed rent was set at \$800.00 per month and it is acknowledged in the lease that the tenant had paid a security deposit of \$400.00.
9. The landlord submitted rent records with her application showing the payments she had received from the tenant since he had moved into the unit. According to the landlord, the tenant's rent was paid and up-to-date for the period ending 31 January 2021. However, she stated that she had only received \$260.00 for February's rent leaving a balance of \$540.00 for that month. She further testified that no rent has been received for March or April 2021.
10. The landlord calculates that the tenant owes her \$2140.00 for the period ending 30 April 2021 (\$540.00 for February 2021 and \$1600.00 for March and April 2021).

Analysis

11. I accept the landlord's claim that the tenant had not paid his rent as required. Based on her testimony and evidence I find that the tenant owes \$540.00 for February 2021 and that his rent of \$800.00 has not been paid for March or April 2021.
12. However, 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. I calculate the amount owing to be \$1497.80 (\$540.00 owing for February 2021, \$800.00 for March 2021 and \$157.80 for April 2021 (\$800.00 per month x 12 months = \$9600.00 per year ÷ 365 days = \$26.30 per day x 6 days = \$157.80)).

Decision

13. The landlord's claim for a payment of rent succeeds in the amount of \$1497.80.
14. The tenant shall pay a daily rate of rent in the amount of \$26.30, beginning 07 April 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 her application, the landlord submitted a copy of a termination notice which she stated was posted to the tenant's door on 13 February 2021.
16. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 24 February 2021.
17. 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

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. On 13 February 2021 when the termination notice was issued, the tenant was in arrears in the amount of \$140.00 and had been in arrears since the beginning of February 2021. No payments have been made since this termination notice was issued and since then the remaining rent for February 2021 has come due as well as the rent for March and April 2021.
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 \$400.00 on 24 October 2020 and receipt of that deposit is acknowledged in the submitted lease. As the landlord's claim has been successful, she shall retain that security deposit as outlined in this decision and attached order.

Issue 4: Hearing Expenses

24. The landlord paid a fee of \$20.00 to file this application. As her claim has been successful, the tenant shall pay that hearing expense.

Summary of Decision

25. The landlord is entitled to the following:
 - A payment of \$1117.80, determined as follows:
 - a) Rent Owing\$1497.80
 - b) Hearing Expenses.....\$20.00
 - c) LESS: Security Deposit..... (\$400.00)

d) Total.....\$1117.80

- An order for vacant possession of the rented premises,
- A payment of a daily rate of rent in the amount of \$26.30, beginning 07 April 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.

07 April 2021

Date

