

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0128-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:17 pm on 04 May 2021 via teleconference.
2. The applicant, [REDACTED] hereinafter referred to as “the landlord”, participated in the hearing. The respondents, [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 \$200.00;
 - b. Authorization to retain the security deposit of \$800.00; and
 - c. 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*.

Preliminary Matters

6. The tenants were not present or represented at the hearing and I was unable to reach them 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) 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 respondents fail to attend the hearing,

Rule 29.11(1) states that the hearing may proceed in the respondents' absence so long as they have been properly served. The landlord submitted an affidavit with his application stating that the tenants had been personally served with notice of the hearing on 26 March 2021 and they have had 38 days to provide a response. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.

7. The landlord amended his application at the hearing and stated that he was now seeking \$1200.00 in rent for April 2021 and 4 days' pro-rated rent for May 2021.

Issue 1: Rent - \$1400.00, plus 4 pro-rated days

Relevant Submissions

8. The landlord stated that he had entered into a 1-year, fixed-term rental agreement with the tenant commencing 01 October 2019 and a copy of the executed lease was submitted with his application (████ #1). The current rent is set at \$1200.00 per month and it is acknowledged in the lease that the tenants had paid a security deposit of \$800.00.
9. The landlord submitted rent records with his application showing the payments he had received from the tenants since January 2021 (████ #2). These records show that the tenants' rent was paid and up-to-date for the period ending 28 February 2021, but the landlord pointed out that he had only received \$1000.00 for March 2021, leaving a balance of \$200.00. No payments have been made since.
10. The landlord is seeking an order for a payment of that \$200.00 owing from March 2021, \$1200.00 for April 2021 and rent for 4 days for May 2021.

Analysis

11. I accept the landlord's claim that the tenants have not paid their rent as required. Based on his testimony and evidence I find that the tenants owe \$200.00 for March 2021 and that no rent has been paid since.
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 \$1557.80 (\$1400.00 owing for the period ending 30 April 2021 (\$200.00 for March and \$1200.00 for April 2021) and \$157.80 for May 2021 (\$1200.00 per month x 12 months = \$14,400.00 per year ÷ 365 days = \$39.45 per day x 4 days = \$157.80)).

Decision

13. The landlord's claim for a payment of rent succeeds in the amount of \$1557.80.
14. The tenants shall pay a daily rate of rent in the amount of \$39.45, beginning 05 May 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 #3) which he stated was posted to the tenants' door on 22 March 2021.
16. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 02 April 2021.
17. The tenants have 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 22 March 2021 when the termination notice was issued, the tenants were in arrears in the amount of \$200.00 and had been in arrears since the beginning of that month. No payments have been made since this termination notice was issued and since then the rent for April and May 2021 has 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 tenants 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 tenants had paid a security deposit of \$800.00 on 06 September 2019 and receipt of that deposit is acknowledged in the submitted lease. 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. The landlord paid a fee of \$20.00 to file this application. As his claim has been successful, the tenants shall pay that hearing expense.

Summary of Decision

25. The landlord is entitled to the following:
 - A payment of \$777.80, determined as follows:
 - a) Rent Owing\$1557.80
 - b) Hearing Expenses.....\$20.00
 - c) **LESS: Security Deposit..... (\$800.00)**
 - d) Total.....**\$777.80**

- An order for vacant possession of the rented premises,
- A payment of a daily rate of rent in the amount of \$39.45, beginning 05 May 2021 and continuing to the date the landlord obtains possession of the rental unit,
- The tenants 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 May 2021

Date

