

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0229-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:35 pm on 14 June 2021 via teleconference.
2. The applicants, [REDACTED] hereinafter referred to as “landlord1” and “landlord2”, respectively, participated in the hearing. The respondent, [REDACTED] hereinafter referred to as “the tenant”, also participated.

Issues before the Tribunal

3. The landlords are seeking the following:
 - An order for a payment of rent in the amount of \$1125.00,
 - A determination of the validity of a termination notice, and
 - 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. Landord1 amended the application at the hearing and stated that the tenant now owes a total of \$1875.00 in rent.

Issue 1: Rent - \$1875.00

Relevant Submissions

The Landlords' Position

7. The landlords submitted a rental agreement with their application (█████ #1) showing that they had entered into a monthly rental agreement with the tenant on 01 October 2020 and landlord2 stated that the tenant had already been residing at the property when they purchased it in August 2020.
8. The agreed rent was set at \$750.00 per month and landlord2 stated that they had entered into a verbal agreement with the tenant that he could pay that rent in 2 installments of \$375.00 each, due on the 1st and 15th day of each month.
9. The landlords submitted rent records with their application showing the payments they had received from the tenant since he moved into the unit (█████ #2). According to these records, the tenant's rent was paid and up-to-date for the period ending 14 April 2021. Since then, the tenant has paid no rent.
10. The landlords are seeking an order for a payment of the remaining \$375.00 owing for April 2021 and \$750.00 for each of May and June 2021.

The Tenant's Position

11. The tenant acknowledged that he had not pad any rent for the periods noted by the landlords.
12. However, he argued that he does not owe the full amount that the landlords are claiming here. The tenant pointed out that as part of their rental agreement, the rent he pays includes the provision of internet Wi-Fi but he complained that, in early May 2021, the Wi-Fi was disconnected by the landlords in retaliation for his failure to pay rent.
13. The landlords acknowledged that they disconnected the Wi-Fi on 07 May 2021.

Analysis

14. There is no dispute that the tenant had not been paying his rent as required and according to the landlords' records, no rent was received for the period commencing 15 April 2021.
15. I do agree with the tenant, however, that as the landlords had disconnected the Wi-Fi, and as that utility was included as part of the rent the tenant was required to pay, he is entitled to a rent abatement. Landlord2 stated that he pays approximately \$100.00 per month for the Wi-Fi and that it is shared between the

tenant and the upstairs apartment. I find that a \$50.00 abatement is therefore appropriate.

16. As the landlords are also seeking an order for vacant possession of the rented premises, I find that they are entitled to a payment of rent to the date of the hearing and a per diem thereafter.
17. I calculate the amount owing to be \$1604.23 (\$375.00 for the period from 15 April to 30 April 2021 (the Wi-Fi was connected during that period), \$700.00 for May 2021 (\$750.00 in rent less the \$50.00 abatement) and \$529.23 for June 2021 (\$700.00 per month x 12 months = \$8400.00 per year ÷ 365 days = \$23.01 per day x 23 days)).

Decision

18. The landlords' claim for a payment of rent succeeds in the amount of \$1604.23.
19. The tenant shall pay a daily rate of rent in the amount of \$23.01, beginning 24 June 2021, and continuing to the date the landlords obtain vacant possession of the rented premises.

Issue 2: Vacant Possession of Rented Premises

Issue 3: Validity of Notice

Relevant Submissions

The Landlord's Position

20. With their application, the landlords submitted a copy of a termination notice which landlord1 stated was posted on the tenant's door on 24 April 2021.
21. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 04 May 2021.
22. The tenant has not vacated the rented premises as required and the landlords are seeking an order for vacant possession of the rented premises.

The Tenant's Position

23. The tenant acknowledged receiving the termination notice.
24. He pointed out that, had he paid off the arrears owing prior to 04 May 2021, then the notice would have been void and of no effect. He claimed that he tried to pay the rent to the landlords, but he had a disagreement with them about how much was owing in rent as they had disconnected the Wi-Fi.

Analysis

25. 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.

26. According to the landlord's rent records, on 24 April 2021 the tenant was in arrears in the amount of \$375.00 and had been in arrears since 16 April 2021. The tenant has made no payments to the landlords since that notice was issued and since then, the rent for May and June 2021 has also come due.

27. Although I agree with the tenant that he is entitled to a rent abatement as the landlords had disconnected the Wi-Fi, that fact has no effect on the validity of this termination notice. The notice was issued in April 2021 and it had an effective termination date of 04 May 2021. During that period, the tenant still had full use of the Wi-Fi and there was no reason to think that the rent owing during that time had changed from \$750.00 per month, paid in those 2 \$375.00 installments.

28. As the termination notice meets all the requirements set out in section 19 of the *Act*, it is a valid notice.

Decision

29. The termination notice issued to the tenant on 24 April 2021 is a valid notice.

30. The landlords' claim for an order for vacant possession of the rented premises succeeds.
31. The tenant shall pay to the landlords any costs charged to the landlords by the Office of the High Sheriff should the landlords be required to have the Sheriff enforce the attached Order of Possession.

Summary of Decision

32. The landlords are entitled to the following:
 - A order for a payment of rent in the amount of \$1604.23,
 - An order for vacant possession of the rented premises,
 - A payment of a daily rate of rent in the amount of \$23.01, beginning 24 June 2021 and continuing to the date the landlord obtains possession of the rental unit,
 - The tenant shall also pay to the landlords 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.

30 June 2021

Date

