

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0252-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:15 am on 18 August 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,” did not participate.

Issues before the Tribunal

4. The landlord is seeking 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 I reached her by telephone at the start of the hearing and provided her with the information required should she want to attend. 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 (█ #1) with her application stating that she had served the tenant's boyfriend, █ with notice of the hearing, on July 14, 2021, by placing it in his hand and she had followed up with the tenant, by text, to ensure that she had received the notification of the hearing. 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 her absence.

Issue 1: Vacant Possession of Rented Premises

Relevant Submissions

8. The landlord stated that she had entered into a written rental agreement for a one year term, from August 01, 2020 to July 31, 2021.
9. According to the rental agreement the rent was \$1,150.00 per month, due on the first of each month. It was agreed that that rent was due on the 1st of each month, but the tenant started making payments semi-monthly for half of the rent. The landlord accepted this.
10. The landlord also submitted a receipt showing that the tenant had paid a security deposit in the amount of \$575.00 on July 22, 2020.
11. With her application, the landlord submitted 2 termination notices she had issued to the tenant (█ #2)
12. The first notice was served on the tenant on 15 April 2021 and it was issued under section 18 of the *Residential Tenancies Act, 2018* (notice of termination of rental agreement). This notice was a 3-month, no-cause notice and it had an effective termination date of 31 July 2021.
13. After the tenant received the first termination notice (AI#04) on April 15, 2021, she stopped paying rent.
14. Subsequently, the landlord served the tenant with a second termination notice on 25 May 2021. That second notice was issued under section 19 of the *Residential Tenancies Act, 2018* (notice where failure to pay rent) and it had an effective termination date of 06 June 2021.
15. The landlord testified that the tenant had not paid her rent for April or May 2021 when she issued the notice, and no payments had been made since. The landlord calculates that the tenant currently owes her \$5750.00 for the period from 01 April to 31 August 2021.
16. The landlord is seeking an order for vacant possession.

Analysis

17. 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.

18. I accept the landlord's claim that the tenant has not paid rent as required and that no payments have been made for the period from 01 April 2021 to the date of the hearing.
19. As the termination notice meets all the requirements set out in section 19 of the *Act*, it is a valid notice.

Decision

20. The landlord's claim for an order for vacant possession of the rented premises succeeds.
21. 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 2: Hearing Expenses

22. As the landlord's claim has been successful, the tenant shall pay her hearing expense of \$20.00 for the costs of filing this application.

Summary of Decision

23. The landlord is entitled to the following:

- An order for vacant possession of the rented premises,
- The landlord is authorized to retain \$20.00 of the security as reimbursement of her hearing expenses.
- 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.

31 August 2021

Date

