

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0335-SJ

Jacqueline Williams
Adjudicator

Introduction

1. The hearing was called at 01:45 p.m. on September 13, 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 attend.

Preliminary Matters

4. The tenant was not present or represented at the hearing and we attempted to contact by telephone, however, the call was not answered. This Tribunal’s policies concerning notice requirements and hearing attendance have been adopted for 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 with his application stating that he had served the tenant with notice of the hearing personally on August 08, 2021. This is considered good service. 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.
5. The landlord amended his application to reflect rent owing to today’s date and he provided a rent ledger ([REDACTED] #02). The amount now owing has increased from \$2,250.00 to \$3,750.00. The landlord also amended his application to reflect utilities owing to the most recent billing in August and he provided a utilities ledger ([REDACTED] #03). The amount now owing has increased from \$438.91 to \$512.27.

Issues before the Tribunal

6. The landlord is seeking the following:
 - An order for payment of rent in the amount of \$3,750.00
 - An order for payment of utilities in the amount of \$512.27

- An order for vacant possession of the rented premises
- Reimbursement of hearing expenses

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
8. Also relevant and considered in the case is section 19 of the *Residential Tenancies Act 2018*: notice when failure to pay rent, section 34: requirement for notices, section 35: Service of documents.

Issue 1: Payment of rent in the amount of \$3,750.00

Relevant Submissions

9. The landlord and tenant entered a verbal month to month rental agreement in March or April 2021, the landlord is unsure of the exact dates. The rental agreement is for \$750.00 a month due on the first of each month. There was a damage deposit paid of \$370.00, the landlord still has this deposit. The tenant took possession around the end of March or beginning of April 2021.
10. The landlord submitted a rent ledger (█#02) which indicates rent owing beginning May 01, 2021. The rent ledger was amended as it reflected the month of June twice. The landlord intended the second listing for June to be July. The ledger was then updated to the present day, totaling \$3,750.00.
11. The landlord stated that only the first month's rent has been paid.

Analysis

12. The landlord has shown documentation by submitting a rent ledger (█#02) indicating the rent owing.
13. Non-payment of rent violates the lease agreement by the tenant and violates their verbal contract.
14. Based on the documentation provided into evidence, as well as, the sworn testimony of the landlord, I find that the tenant owes the landlord the outstanding rent.
15. I calculate the amount owing to be \$3,320.58 (\$3,000.00 for the period of May 01 – August 31, 2021 and \$320.58 for September 2021 (\$750 per month x 12 months = \$9,000.00 divided by 365 days = \$24.66 per day x 13 days)).

Decision

16. The landlord's claim for a payment of rent succeeds in the amount of \$3,320.58.

17. The tenant shall pay a daily rate of rent in the amount of \$24.66, beginning 14 September 2021, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Payment of utilities in the amount of \$512.27

Relevant Submissions

18. The landlord submitted a ledger for the utilities (█#03) which indicates utilities owing beginning May 01, 2021 and has been amended to reflect the last bill received in August 2021, totaling \$512.27.
19. The landlord gave testimony that these utilities have not been paid.

Analysis

20. The landlord submitted a ledger stating that the utility bill is owed by the tenant. He did not submit the actual utility bills to verify the costs incurred for the utilities, the landlord's claim fails.

Decision

21. The landlord's claim for a payment of utilities fails.

Issue 3: Vacant Possession of the Rental Premises

Relevant Submissions

22. The landlord served the termination notice in person to tenant (█#04) on the date he signed the paper, July 24, 2021. The notice instructed the tenant to vacate the premises on August 4, 2021.

Analysis

23. The relevant subsections of s.19 of the Residential Tenancies Act, 2018 state:

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.

.....

24. At the time the landlord served notice to the tenant, the rent had been in arrears since May 01, 2021, this is supported by the submitted rent ledger (█ #02)
25. The landlord in a month to month lease can give notice when the rent is overdue for 5 days. The landlord can give notice for not less than 10 days after the notice is served on the tenant.
26. The landlord's claim meets the requirements of the *Act*.

Decision

27. The landlord's claim for an order for vacant possession of the rental premises succeeds.
28. The tenant shall pay to the landlord any costs charged to the landlord by the Office of the High Sherriff should the landlord by requited to have the Sheriff enforce the attached Order of Possession.

Issue 4: Reimbursement for cost of hearing

29. As the landlord's claim has been successful, the tenant shall pay the hearing expense of \$20.00 for the cost of filing this application; receipt for hearing expense is included (█ #05).

Summary of Decision

30. The landlord is entitled to the following:
 - Rent owing of \$3,320.58, as well as, the \$20.00 filing fee. For a total of \$3,340.58.
 - A payment of a daily rate of rent in the amount of \$24.66 per day beginning September 14, 2021 and continuing to the date the landlord obtains possession of the rental unit.
 - An order for vacant possession of the rented premises.
 - 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.

September 21, 2021
Date

