

Residential Tenancies Tribunal

Application [REDACTED]
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Decision 21-0527-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:50 PM on 09 February 2022 via teleconference.
2. The applicant and tenant, [REDACTED] was represented at the hearing by [REDACTED] and a letter of authorization is on file.
3. The respondent, [REDACTED] was represented at the hearing by [REDACTED] hereinafter referred to as "landlord1" and "landlord2", respectively.

Issues before the Tribunal

4. The tenant is seeking a determination of the validity of a termination notice issued to him on 29 October 2021.
5. The landlord is seeking the following:
 - An order for a payment of rent in the amount of \$1920.00, and
 - An order for vacant possession of the rented premises.

Preliminary Matters

6. Landlord1 amended her application at the hearing and stated that she was now seeking a total claim of rent in the amount of \$1465.00.

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 this case is section 19 of the *Residential Tenancies Act, 2018*.

Issue 1: Rent - \$1465.00

Relevant Submissions

The Landlord's Position

9. Landlord1 stated that she had entered into a monthly rental agreement with the tenant on 28 February 2014 and a copy of that executed agreement was submitted with her application (█ #1). Landlord1 stated that the current rent is set at \$605.00 and it is acknowledged in the rental agreement that the tenant had paid a security deposit of \$300.00.
10. With her application, the landlord had submitted a copy of her rent records showing the payments the tenant had made since March 2021 (█ #2). According to these records, the tenant had a zero-balance at the end of February 2021, but he paid no rent for March 2021 and no rent payment was made for August 2021, either. Landlord1 also pointed out that in 2021, although the rent had been set at \$580.00, the tenant had only been paying \$555.00 per month, which was the amount he had been charged prior to a rental increase which took effect in January 2019.
11. According to the landlord's rent records, because the rent was not paid for those 2 months, and because the tenant had been \$25.00 short on his monthly rent for almost a year, the current rental arrears stand at \$1465.00 for the period ending 28 February 2022. The landlord is seeking an order for a payment of that amount.

The Tenant's Position

12. █ acknowledged that the tenant owed the landlord \$1465.00 in rent.

Analysis

13. As the landlord and tenant do not dispute the amount of rent that is owing, the landlord's claim succeeds.

Decision

14. The landlord's claim for an order for a payment of rent succeeds in the amount of \$1465.00.

Issue 2: Validity of Notice

Relevant Submissions

The Tenant's Position

15. With his application, the tenant had submitted a copy of a termination notice he had received from the landlord, dated 29 October 2021 (█ #1). That notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 08 November 2021.
16. █ stated that the tenant is objecting to the validity of that notice as he reported to her that he had not received the landlord's notices of rental increase.

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. There is no dispute that the tenant had not paid his rent, as required, and according to the landlord's rent records, on 29 October 2021, he was in rental arrears in the amount of \$1315.00, and had been in arrears since at March 2021.

19. Regarding the issue of the rental increases, it was unclear to me that the landlord had been properly increasing the tenant's rent during this tenancy. Notices were submitted with the landlord's application indicating, both, that his rent was increasing, and, that his rent was not increasing due to the financial hardship it would cause him (█ #3). These notices also seem to indicate that the tenant's rent was increasing, on 2 month's notice, because he had not submitted financial information to the landlord on time. But a landlord is required to provide the tenant with at least 6 month's notice that his rent is increasing.
20. Be that as it may, the notice of termination submitted with the tenant's application is not valid anyhow. A termination notice issued under this section of the *Act* must specify a termination date that "is not less than 10 days after the notice is served on the tenant". As the words "not less than" are used here, the 10 days referenced must be clear days, meaning that there have to be 10 full days between the date the notice was issued and the date the tenant is required to vacate. As the notice is dated 29 October 2021, the earliest the landlord could have required the tenant to vacate, through this notice, would have been 09 November 2021. As such, that termination notice is not valid.

Decision

21. The termination notice issued to the tenant, dated 29 October 2021, is not a valid notice.

Issue 3: Vacant Possession of Rented Premises

Relevant Submissions

The Landlord's Position

22. With her application, the landlord submitted a second termination notice that she had also issued to the tenant (█ #4). That notice was also issued under section 19 of the *Residential Tenancies Act, 2018* (notice where failure to pay rent) and it had an effective termination date of 18 January 2022.
23. The submitted termination notice is dated 07 January 2022, but landlord1 testified at the hearing that she had personally posted it to the tenant's door on 10 January 2022.

The Tenant's Position

24. █ acknowledged that the tenant had received this second notice but she did not know the date on which it was delivered to him.

Analysis

25. This notice is also not valid, and for the same reasons the one issued on 29 October 2021 is invalid. As this second notice was issued on 10 January 2022, the earliest date the landlord could have required the tenant to vacate the premises, under section 19 of the *Act*, would have been 21 January 2022, not 18 January 2022, as stated. That is, this is a 7-day notice, not a 10-day notice, as required by the legislation.

Decision

26. The termination notice issued to the tenant on 10 January 2022 is not a valid notice.
27. The landlord's claim for an order for vacant possession of the rented premises does not succeed.

Summary of Decision

28. The landlord is entitled to an order for a payment of rent in the amount of \$1465.00, for the period ending 28 February 2022.
29. The termination notices issued to the tenant on 29 October 2021 and 10 January 2022 are not valid notices.
30. The landlord's claim for an order for vacant possession of the rented premises does succeed.

11 February 2022

Date

