

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0567-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:16 AM on 16 February 2022 via teleconference.
2. The applicant, [REDACTED] hereinafter referred to as “the landlord”, participated in the hearing. The respondents, [REDACTED] hereinafter referred to as “the tenants”, did not participate.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for a payment of rent in the amount of \$1350.00, 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* and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

6. The tenants were not present or represented at the hearing and there was no available telephone number where they could be reached. 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 affidavits with his application stating that he had personally served the tenants with his application on 02 February 2022 and they have had 13 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 a total claim of rent in the amount of \$740.00.

Issue 1: Rent - \$740.00

Relevant Submissions

8. The landlord stated that he had had entered into a 1-year, fixed-term lease with the tenants on 12 July 2020 and a copy of that executed lease was submitted with his application (█ #1). The agreed rent was set at \$800.00 per month and it is acknowledged in the lease that the tenant had paid a security deposit \$400.00.
9. With his application, the landlord submitted a copy of his rent records showing the rent that the tenants have paid since November 2021 (█ #2). According to these records, the tenants only paid \$250.00 in rent for November 2021, \$350.00 for December 2021, \$840.00 for January 2022, and \$960.00 for February 2022.
10. The landlord calculates that the tenant owe him \$760.00 and he is seeking an order for a payment of that amount.

Analysis

11. I accept the landlord's claim that the tenants have not paid rent as required. Based on the landlord's records and testimony, I find that, for the period ending 28 February 2022, the tenants owe the landlord \$800.00 (\$1000.00 owing for the period ending 31 December 2021 (\$550.00 + \$450.) less a credit of \$200.00 for the period ending 28 February (\$40.00cr + \$160.00cr)).
12. As the landlord is also seeking an order for vacant possession of the rented premises, I find that she is entitled to a payment of rent to the date of the hearing and a per diem thereafter.
13. I calculate the amount owing to be \$420.80 (\$960.00 for the period ending 31 January 2022 less a credit of \$539.20cr for February 2022 (\$800.00 per month x 12 months = \$9600.00 per year ÷ 365 days = \$26.30 per day x 16 days = \$420.80 less the payments in that month totalling \$960.00)).

Decision

14. The landlord's claim for a payment of rent succeeds in the amount of \$420.80.
15. The tenants shall pay a daily rate of rent in the amount of \$26.30, beginning 17 February 2022, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Vacant Possession of Rented Premises

Relevant Submissions

16. With his application, the landlord submitted a copy of a termination notice (█ #3) which he stated he had personally delivered to the tenants on 06 December 2021. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 17 December 2021.
17. The landlord stated that the tenants have not moved out, as required, and he 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. According to the landlord's records, on 06 December 2021, the day the termination notice was issued, the tenants were in arrears in the amount of \$1000.00, and had been in arrears since the beginning of November 2021.
20. As the notice meets all the requirements set out in this section of the *Act*, and as it was properly served, 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: Hearing Expenses

23. The landlord paid a fee of \$20.00 to file this application. As his claim has been successful, the tenants shall pay this hearing expense.

Issue 4: Security Deposit

24. The landlord stated that the tenants had paid a security deposit of \$400.00 on 12 July 2020, and receipt of that deposit is acknowledged in the submitted lease. As the landlord's claim has been successful, he shall retain that deposit as outlined in this decision and attached order.

Summary of Decision

25. The landlord is entitled to the following:
 - A payment of \$40.80, determined as follows:

a) Rent Owing	\$420.80
b) Hearing Expenses.....	\$20.00
c) LESS: Security Deposit.....	(\$400.00)
d) Total	<u>\$40.80</u>
 - An order for vacant possession of the rented premises,

- A payment of a daily rate of rent in the amount of \$26.30, beginning 17 February 2022 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.

21 February 2022

Date

