

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0569-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:15 AM on 06 January 2022 via teleconference.
2. The applicant, [REDACTED] was represented at the hearing by [REDACTED] hereinafter referred to as “the landlord”. The respondent, [REDACTED] hereinafter referred to as “the tenant”, 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 \$1702.00,
 - An order for vacant possession of the rented premises,
 - Authorization to retain the \$300.00 security deposit, and
 - An order for a payment of other expenses totalling \$20.00.

Preliminary Matters

4. The tenant was not present or represented at the hearing and I was unable to reach him by telephone at the start of the hearing. 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 testified that she had served the tenant with notice of the hearing, by e-mail, on 22 December 2021, and a copy of that e-mail was submitted with her application. 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 her application at the hearing and stated that she was now seeking a total claim of rent in the amount of \$2,890.00.

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
7. 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*.

Issue 1: Rent - \$2890.00

Relevant Submissions

8. The landlord stated that she had had entered into a monthly rental agreement with the tenant on 20 December 2019 and a copy of that executed agreement was submitted with her application (■■■■ #1). The landlord stated that the current rent is set at \$594.00 and it is acknowledged in the submitted agreement that the tenant had paid a security deposit of \$300.00.
9. The landlord submitted rent records with her application (■■■■ #2) showing the payments she had received from the tenant since April 2021, the last time he had a zero-balance. These records show that the tenant had not made any payments for the months of April, June and August 2021, and that at the end of October 2021, he was in arrears in the amount of \$1108.00. No payments have been made since October 2021, and since then the rent for November 2021, December 2021, and January 2022—a total of \$1782.00—has come due.
10. The landlord is seeking an order for a payment of \$2890.00 (\$1108.00 + \$1782.00) for the period ending 31 January 2022.

Analysis

11. I accept the landlord's claim that the tenant has not paid his rent as required, and her records show that he was carrying a balance since May 2021, and that rent has not been paid for the last 3 months.
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 \$2413.18 (\$2296.00 for the period ending 31 December 2021 and \$117.18 for January 2022 (\$594.00 per month x 12 months = \$7128.00 per year ÷ 365 days = \$19.53 per day x 6 days = \$117.18)).

Decision

14. The landlord's claim for a payment of rent succeeds in the amount of \$2413.18.
15. The tenant shall pay a daily rate of rent in the amount of \$19.53, beginning 07 January 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 her application, the landlord submitted a copy of a termination notice (█ #3) which she stated was sent to the tenant, by e-mail, on 09 September 2021. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 20 September 2021.
17. The landlord testified that she had issued the tenant a second termination notice on 08 December 2021, and a copy of that notice was submitted after the hearing had concluded (█ #4). That notice was also issued under section 19 of the *Act*, but this notice had an effective termination date of 19 December 2021.
18. The landlord stated that the tenant has not moved out, as required, and she is seeking an order for vacant possession of the rented premises

Analysis

19. 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.

20. Regarding the most recent termination notice [REDACTED] #4), on 09 December 2021, the day that notice was issued, the tenant was in arrears in the amount of \$2296.00, and he had been in arrears since April 2021.
21. As the notice meets all the requirements set out in this section of the *Act*, and as it was properly served, it is valid. As this later notice is valid, there is no need to examine the earlier notice issued in September 2021.

Decision

22. The landlord's claim for an order for vacant possession of the rented premises succeeds.
23. 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 3: Hearing Expenses

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

Issue 4: Security Deposit

25. The landlord stated that the tenant had paid a security deposit of \$300.00 on 05 December 2019, and receipt of that deposit is acknowledged in the submitted rental agreement. As the landlord's claim has been successful, she shall retain that deposit as outlined in this decision and attached order.

Summary of Decision

26. The landlord is entitled to the following:
 - A payment of \$2133.18, determined as follows:

a) Rent Owning	\$2413.18
b) Hearing Expenses.....	\$20.00
c) LESS: Security Deposit.....	(\$300.00)

d) Total.....\$2133.18

- An order for vacant possession of the rented premises,
- A payment of a daily rate of rent in the amount of \$19.53, beginning 07 January 2022 and continuing to the date the landlord obtains possession of the rental unit,
- 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.

12 January 2022

Date

