

Residential Tenancies Tribunal

Decision 20-0020-02

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:06 pm on 14 September 2020 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, participated in the hearing.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant”, did not participate.

Issues before the Tribunal

4. The landlord is seeking the following:
 - a. An order for a payment of rent in the amount of \$2000.00, and
 - b. 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 are sections 18, 19 and 35 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 was not able to reach him by telephone. 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 with his application stating that the tenant was personally served with notice of this hearing on 27 July 2020 and the tenant has had 48 days to provide a response. 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.

8. The landlord amended his application at the hearing and stated that he was seeking an additional \$1000.00 in rent for a total claim of \$3000.00.

Issue 1: Rent Owing - \$3000.00

Relevant Submissions

9. The landlord stated that the tenant moved into the property with his girlfriend in June 2016. The tenant's girlfriend moved out in 2020, and commencing April 2020 the tenant verbally agreed to rent the unit as the sole leaseholder. The agreed rent was set at \$1000.00.
10. The landlord stated that the tenant had paid his rent for April 2020 but he has only received 2 payments since: \$1000.00 was paid on 08 July 2020 and another \$1000.00 was paid around 18 July 2020. Those payments covered off the rent up to 30 June 2020.
11. The landlord is seeking an order for a payment of rent for July, August and September 2020—a total of \$3000.00.

Analysis

12. I accept the landlord's claim that the tenant has not paid rent as required and that the rent has not been paid for July, August and September 2020. As the landlord is also seeking an order for vacant possession of the rented premises, I find that he 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 \$2459.06 (\$2000.00 for the period ending 31 August 2020 and \$459.06 for September 2020 (\$1000.00 per month x 12 months = \$12000.00 per year ÷ 366 days = \$32.79 per day x 14 days = \$459.06)).

Decision

14. The landlord's claim for a payment of rent succeeds in the amount of \$2459.06.

15. The tenant shall pay a daily rate of rent in the amount of \$32.79, beginning 15 September 2020, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Vacant Possession of the Rented Premises

Relevant Submissions

16. With his application, the landlord submitted copies of 2 termination notices which he stated he had personally issued to the tenant.
17. The first termination notice was posted to the tenant's door on 28 May 2020. This notice was a standard 3-month notice, issued under section 18 of the *Residential Tenancies Act, 2018*. That notice had an effective termination date of 31 August 2020.
18. The most recent termination notice was issued by the landlord, by text-message, on 06 July 2020 at 5:53 pm. This termination notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 17 July 2020.
19. The landlord is seeking an order for vacant possession of the rented premises.

Analysis

20. Regarding the most recent notice, 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.

21. According to the landlord's testimony and records, the tenant had been in rental arrears for over 2 months when he issued the termination notice to him on 06 July 2020. Although the tenant made 2 payments to the landlord, totalling \$2000.00, after the notice was issued, he still had not brought the balance owing down to zero. The rent for July 2020 was still owing.
22. However, even though the tenant had not paid off all of the rental arrears by 17 July 2020, the termination notice is not valid.
23. Section 35 of this Act states:

Service of documents

35. (2) *A notice or other document under this Act other than an application under section 42 shall be served by a landlord on a tenant by*

...

(f) sending it electronically where

(i) it is provided in the same or substantially the same form as the written notice or document,

(ii) the tenant has provided an electronic address for receipt of documents, and

(iii) it is sent to that electronic address

...

(6) For the purpose of this section, where a notice or document is sent electronically, it shall be considered to have been served on the day it is sent, if the document is sent by 4 p.m., or the next day that is not a Saturday or holiday, if the document is sent after 4 p.m.

24. As the landlord had sent this notice electronically at 5:53 pm on 06 July 2020, it is considered to have been served on 07 July 2020. But on 07 July 2020, the earliest the landlord could terminate the rental agreement under this section of Act would be 18 July 2020—10 clear days after the notice was issued. As the landlord's notice indicates that the tenant has to vacate on 17 July 2020, it does not meet the timeframe requirements set out here and is therefore invalid.

25. This leaves the termination notice issued on 28 May 2020. The relevant subsections of s.18 of the *Residential Tenancies Act, 2018* state:

Notice of termination of rental agreement

18. (2) A landlord shall give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises

...

(b) not less than 3 months before the end of a rental period where the residential premises is rented from month to month

...

(9) In addition to the requirements under section 34, a notice under this section shall

(a) be signed by the person providing the notice;

(b) be given not later than the first day of a rental period;

(c) state the date, which shall be the last day of a rental period, on which the rental agreement terminates and the tenant intends to vacate the residential premises or the date by which the tenant is required to vacate the residential premises; and

(d) be served in accordance with section 35

26. Section 18 of the *Act* allows a landlord to terminate a rental agreement, on 3 month's notice, without having to provide reasons to either the tenant or this Board.
27. 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 and the tenant ought to have vacated the unit by 31 August 2020.

Decision

28. The landlord's claim for an order for vacant possession of the rented premises succeeds.
29. 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

30. With his application, the landlord submitted a receipt showing that he had paid \$50.00 to hire a process server and a receipt showing that he had paid \$20.00 to file this application. As the landlord's claim has been successful, the tenant shall pay these hearing expenses.

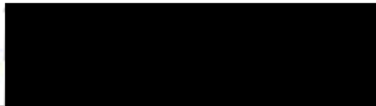
Summary of Decision

31. The landlord is entitled to the following:

- A payment of \$2529.06, determined as follows
 - a) Rent Owing\$2459.06
 - b) Hearing Expenses.....\$70.00
 - c) Total Owing to Landlord\$2529.06
- A payment of a daily rate of rent in the amount of \$32.79, beginning 15 September 2020 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.

17 September 2020

Date



John R. Cook
Residential Tenancies Tribunal