

Residential Tenancies Tribunal

Decision 20-0027-02

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:36 pm on 20 October 2020 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, participated in the hearing. He was represented by [REDACTED] (“[REDACTED]”).
3. The respondent, [REDACTED], hereinafter referred to as “the tenant”, did not participate in the hearing.

Issues before the Tribunal

4. The landlord is seeking 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 is section 19 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 unable to reach him by telephone from the hearing room. 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 he had personally served the tenant with notice of the hearing on 08 October 2020 and he has had 11 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.

Issue 1: Vacant Possession of the Rented Premises

Relevant Submissions

8. The landlord stated that he had entered into a verbal rental agreement with the tenant approximately 4 years ago. The monthly rent is set at \$600.00.
9. Although no rent records were submitted with his application, the landlord testified that the tenant owes him at least \$6000.00 in rent. He further complained that he had received just 1 rent payment during the 2020 calendar year—a \$400.00 rent payment made on 01 June 2020.
10. Because the tenant had fallen so far behind in his rent, the landlord elected to terminate their rental agreement. Accordingly, ■ stated that on 04 September 2020 she posted a termination notice to the door of the rental unit and a copy of that notice was submitted with the landlord's application.
11. This termination notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 15 September 2020.
12. The landlord stated that the tenant has not moved out, as required, and he is seeking an order for vacant possession of the rented premises.

Analysis

13. 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),*

(a) where the residential premises is rented from week to week and the amount of rent payable by a tenant is overdue for 3 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 3 days after the notice is served on the tenant; and

(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.


14. According to the landlord's testimony, the tenant had been in rental arrears for over 9 months when he was served with the termination notice. No payments have been made since the notice was issued and since then rent for October 2020 has also come due.
15. As the termination notice was properly served and as it meets the timeframe requirements set out in section 19 of the Act, it is a valid notice.

Decision

16. The landlord's claim for an order for vacant possession of the rented premises succeeds.
17. 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.

21 October 2020

Date


John R. Cook
Residential Tenancies Tribunal