

Residential Tenancies Tribunal

Decision 21-0004-04

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:06 am on 01 March 2021 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, participated in the hearing. The respondent, [REDACTED], hereinafter referred to as “the tenant”, did not participate.

Issues before the Tribunal

3. The landlord is seeking the following:
 - a. An order for a payment of rent in the amount of \$1000.00, and
 - b. 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*.

Preliminary Matters

6. The tenant was not present or represented at the hearing and there was no telephone number available where he 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 an affidavit with his application stating that he had served the tenant with notice of the hearing, by e-mail, on 26 January 2021 and a copy of that e-mail was also submitted with his application. The tenant has had 33 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.

7. The landlord amended his application at the hearing and stated that he was now also seeking rent for February and March 2020—an additional \$2000.00.

Issue 1: Rent - \$3000.00

Relevant Submissions

8. The landlord stated that he had entered into a 1-year, fixed-term rental agreement with the tenant on 01 October 2020 and a copy of the executed lease was submitted with his application. The agreed rent was set at \$1000.00 per month and it is acknowledged in the lease that the tenant had paid a security deposit of \$400.00.
9. With his application, the landlord submitted rent records showing the payments he had received from the tenant since he moved in. These records show that the tenant had paid his rent for October, November and December 2020, but the landlord testified that no payments had been made since.
10. The landlord is seeking an order for a payment of rent for the months of January, February and March 2021: \$3000.00.

Analysis

11. I accept the landlord's claim that the tenant has not paid his rent, as required, and that no payments have been made for January and February 2021. I find, therefore, that he is entitled to a payment of \$2000.00 for those 2 months.
12. The tenant is not yet late paying his rent for March 2021 and he has all of that day, the day of the hearing, to make that payment. A determination of whether he was late paying March's rent can only be made on a date after 01 March 2021.

Decision

13. The landlord's claim for a payment of rent succeeds in the amount of \$2000.00.

Issue 2: Vacant Possession of Rented Premises

Relevant Submissions

The Landlord's Position

14. With his application, the landlord submitted a copy of a termination notice which he stated he had personally delivered to the tenant on 06 January 2021.
15. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 17 January 2021.
16. The tenant has not vacated the rented premises as required and the landlord is seeking an order for vacant possession of the rented premises.

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.

18. I find that the termination notice issued to the tenant is not valid as it was issued to him 1 day too early.
19. A termination notice under this section of the *Act* can only be issued after the tenant has been in rental arrears for a full 5 days. As the rent in this tenancy is due on the first day of each month, and as the tenant had all of that day to pay his rent, he only fell into arrears when the clock ticked over to midnight, meaning that 02 January 2021 was the first day rent was overdue. Counting 5 days from 02 January 2021, the earliest the landlord could have issued the tenant a notice under this section would have been 07 January 2021.

20. As the notice does not meet the timeframe requirements set out in this section of the *Act*, it is not valid.

Decision

21. The termination notice issued to the tenant on 06 January 2021 is not a valid notice.

22. The landlord's claim for an order for vacant possession of the rented premises does not succeed.

Issue 3: Hearing Expenses

23. As the landlord's claim for rent has been successful, the tenant shall pay his hearing expense of \$20.00 for the costs of filing this application.


Summary of Decision

24. The landlord is entitled to a payment of \$2020.00, determined as follows:

a) Rent Owing	\$2000.00
b) Hearing Expenses	\$20.00
c) Total	<u>\$2020.00</u>

02 March 2021

Date



John R. Cook
Residential Tenancies Tribunal