

Residential Tenancies Tribunal

Decision 19-016-04

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:30 pm ADT on 15 August 2019 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”, also participated. Her co-respondent, [REDACTED], 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 \$1300.00,
 - b. An order for a payment of late fees in the amount of \$75.00,
and
 - c. 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 landlord amended her application at the hearing and stated that she was no longer seeking an order for a payment of rent and was now only seeking an order for possession of the rented premises.

Issue 1: Vacant Possession of the Rented Premises

Relevant Submissions

The Landlord's Position

7. The landlord stated that she had entered into a 9-month, fixed-term rental agreement with the tenant commencing 01 October 2018 and a copy of the executed lease was submitted at the hearing (GM #1). On 26 June 2019 that lease was renewed for another year (GM #2).
8. The agreed rent is set at \$1300.00 and it is acknowledged in the lease that the tenant had paid a security deposit of \$500.00.
9. In July 2019, the tenant failed to pay her rent on the first of the month, as required, and the landlord therefore issued her a termination notice on 06 July 2019. A copy of that notice was submitted with the landlord's application (GM #3). That notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of noon, 17 July 2019.
10. The landlord stated that she did receive the rent payment of \$1300.00 from the tenant on 19 July 2019 but she pointed out that this was 2 days after the effective termination date set out in her notice.
11. The landlord stated that although the tenant is no longer carrying any rental arrears she is nevertheless seeking an order for vacant possession of the rented premises.

The Tenant's Position

12. The tenant did not contest the landlord's testimony. She acknowledged that she did not pay her rent until 19 July 2019 and she acknowledged receiving the termination notice.
13. The tenant stated that she did not think it is right that she has to vacate, however, as she had just signed another 1-year lease with the landlord on 26 June 2019.

Analysis

14. 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.

15. After reviewing the notice issued by the landlord, I find that it is invalid as it was issued before the tenant had been in arrears for 5 days and as it specified a date that was earlier than the 10 days it could have required the tenant to vacate.
16. Section 19.(1)(b) states that the tenant's rent must be overdue for 5 days or more before a termination notice under this section of the *Act* can be issued. In this tenancy, as rent was due on the 1st day of the month, the first day that the tenant's rent was overdue was 02 July 2019. At the end of day on 06 July 2019, it was overdue for a full 5 days. The earliest the termination notice could have been issued under these circumstances, then, would have been 07 July 2019.
17. A termination notice that is issued on 07 July 2019 must specify a termination date that is "not less than 10 days" after that date. That means that there have to be 10 clear days between the date the notice is issued and the date the tenant is required to vacate. If a notice were issued on 07 July 2019, the earliest termination date the landlord could have specified would have been 18 July 2019.

Decision

18. The termination notice issued to the tenant is invalid.
19. The landlord's claim for an order for vacant possession of the rented premises does not succeed.

04 September 2019

Date



John R. Cook
Residential Tenancies Tribunal