

## Residential Tenancies Tribunal

Application [REDACTED]

Decision 20-0428-05

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 1:03 pm on 20 October 2020 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:
  - a. An order for a payment of rent in the amount of \$2393.00;
  - b. An order for a payment of hearing expenses in the amount of \$20.00; 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* and rule 29 of the *Rules of the Supreme Court, 1986*.

### Preliminary Matters

6. The tenant was not present or represented at the hearing and I was unable to reach her 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 she has been properly served. The landlord submitted an affidavit with her application stating that the tenant was served with notice of the hearing by registered mail and the associated tracking history shows that that letter was delivered to her mailbox on 28 September 2020. The tenant has had 21 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 her absence.

7. The landlord amended the claim at the hearing and stated that she was now seeking \$3445.00 in rent arrears.

### **Issue 1: Rent - \$3445.00**

#### **Relevant Submissions**

8. The landlord stated that the tenant moved into the rental unit in April 2016 as a joint tenant with her then-partner. He moved out in July 2018 and in November 2018 a new rental agreement was entered into whereby the tenant was listed as the sole leaseholder.
9. The current rent is set at \$263.00 per month.
10. According to the landlord's testimony, after the tenant took over the lease, her rent was paid on her behalf by the [REDACTED] That subsidy was withdrawn at the end of July 2019.
11. The landlord submitted rent records showing the payments she had received from the tenant since August 2019. According to these records, the tenant has only made one rent payment between 01 August 2019 and October 2020—a payment of \$500.00 on 15 October 2019.
12. According to these records, the tenant currently is in rental arrears in the amount of \$3445.00 and the landlord is seeking an order for a payment of that amount.

#### **Analysis**

13. I accept the landlord's claim that the tenant has not paid rent as required and her records show that the tenant is currently in arrears in the amount of \$3445.00.
14. As the landlord is also seeking an order for vacant possession of the rental unit, I find that she is entitled to a payment of rent to the date of the hearing and a per diem thereafter.
15. I calculate the rent owing to the date of the hearing to be \$3354.40 (\$3182.00 for the period ending 30 September 2020 (\$263.00 per month x 14 months, less the \$500.00 payment from October 2019) and \$172.40 for October 2020 (\$263.00

per month x 12 months = \$3156.00 per year ÷ 366 days = \$8.62 per day x 20 days = \$172.40)).

## Decision

16. The landlords' claim for a payment of rent succeeds in the amount of \$3354.40.
17. The tenant shall pay a daily rate of rent in the amount of \$8.62, beginning 21 October 2020, and continuing to the date the landlord obtains vacant possession of the rented premises.

## Issue 2: Vacant Possession of Rented Premises

### Relevant Submissions

18. With her application, the landlord submitted a copy of a termination notice which she stated was sent to the tenant by registered mail on 03 June 2020. The associated tracking history shows that that notice was delivered to the tenant's mailbox on 10 June 2020. This notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 26 June 2020.
19. According to the landlord's testimony and records, the tenant was in arrears in the amount of \$2393.00 when she received the notice and the tenant has made no payments since that time. Rent for July, August, September and October 2020 has now come due as well.
20. 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

21. 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.*

22. As the tenant failed to pay off all the rental arrears by 26 June 2020 and as the termination notice meets the timeframe requirements set out in section 19 of the Act, it is a valid notice.

### **Decision**

23. The landlord's claim for an order for vacant possession of the rented premises succeeds.
24. 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**

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

### **Summary of Decision**

26. The landlord is entitled to the following:
- A payment of \$3365.40, determined as follows
    - a) Rent Owing .....\$3345.40
    - b) Hearing Expenses.....\$20.00
    - c) Total Owing to Landlord .....\$3365.40
  - A payment of a daily rate of rent in the amount of \$8.62, beginning 21 October 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.

21 October 2020

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Date



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Residential Tenancies Tribunal