

## Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0035-01

Jacqueline Williams  
Adjudicator

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### Introduction

1. Hearing was called at 1:45 p.m. on 03-November- 2021.
2. The applicant, [REDACTED], represented by [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant” did not attend.

### Preliminary Matters

4. The tenant was not present or represented at the hearing and I was unable to reach him by telephone at the start of the hearing. 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 ([REDACTED] #01) with her application stating that she had served the tenant with notice of the hearing, by prepaid registered mail. She also provided the tracking number; I tracked the package on the Canada Post website and it said it was received on 24-September-2021. The package was not delivered and was returned to the landlord. It is our policy to consider this package served after 5 days. 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.
5. The landlord amended the claim to increase the amount of rent owing from \$1,749.00 to \$2,399.00, to include transactions that had occurred after the application was submitted.

### Issues before the Tribunal

6. The landlord is seeking:
  - Rent paid \$2,399.00
  - Late fees \$75.00

- Vacant possession of the rental premises
- Hearing Expenses \$20.00

**Legislation and Policy**

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
8. Also relevant and considered in this case are section 15: Fee for failure to pay rent, section 19: Notice where failure to pay rent and section 35: Service of documents; of the *Residential Tenancies Act, 2018*.

**Issue 1: Rent paid \$2,399.00**

Relevant Submissions

9. The landlord stated that they entered into a written, monthly agreement with the tenant on 01-June-2020. The tenant took possession of the unit on or about that time. Rent is \$850.00, pay own utilities, a month from the 1<sup>st</sup> to the last day of each month. Rent is due on the 1<sup>st</sup> day of every month. The tenant paid a security deposit of \$300.00 on 05-June-2020; the landlord is still in possession of the deposit.
10. The landlord submitted a rental ledger (█#02) indicating that the tenant is in arrears since November 2, 2020.
11. The rental ledger (█#02) ends on 01-September-2021 with an amount of \$1,749.00 outstanding. The landlord provided information on the transactions following that date, please see table below:

█  
Updated rent ledger

| Date     | Action                             | Amount    | total     |
|----------|------------------------------------|-----------|-----------|
| 1-Sep-21 | starting amount due as per (KA#02) | -1,749.00 | -1,749.00 |
| 1-Oct-21 | Rent due                           | -850.00   | -2,599.00 |
| 1-Oct-21 | cheque payment                     | 150.00    | -2,449.00 |
| 8-Oct-21 | cheque payment                     | 500.00    | -1,949.00 |
| 1-Nov-21 | daily rate                         | -83.85    | -2,032.85 |
| 1-Nov-21 | cheque payment                     | 400.00    | -1,632.85 |

Daily rate  
 \$850.00 a month x 12 months = \$10,200.00  
 \$10,200.00 divided by 365 days = \$27.95  
 \$27.95 a day x 3 days = \$83.85

## Analysis

12. The landlord has provided testimony and submitted evidence to show the tenant is in rental arrears. This is a violation of their rental agreement.
13. I find the information provided meets the burden of proof and have determined that the tenant currently owes the landlord \$1,632.85 in rent.

## Decision

14. The landlord's claim for rental arrears succeeds in the amount of \$1,632.85.

## Issue 2: Late fees \$75.00

### Relevant Submissions

15. The landlord submitted a rental ledger (██████#02) which shows that after the rent was due on 01-November-2020 the tenant fell into arrears and has been in arrears since that date.

## Analysis

16. Section 15 of the *Residential Tenancies Act, 2018* states:

### ***Fee for failure to pay rent***

**15. (1)** *Where a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister.*

The minister has prescribed the following:

*Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed:*

*(a) \$5.00 for the first day the rent is in arrears, and*

*(b) \$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00.*

17. As the tenant has been arrears for a year, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

## Decision

18. The landlord's claim for late fees succeeds in the amount of \$75.00.

### Issue 3: Vacant Possession of the Rental Premises

#### Relevant Submissions

19. The landlord submitted the Notice to Terminate Early – Cause under section 19 of the Residential Tenancies Act for failure to pay rent (█ #03), it is dated for 18-August-2021 with a termination date of 29-August-2021.
20. The landlord said it is common practice when she signs a termination notice, that the Resident Manager will receive it and deliver it on the date signed. She said that the Resident Manager would know this is time sensitive, if there is an issue with service she is informed.
21. She testified that the Resident Manager served this notice in person, on the date signed.

#### **Analysis**

23. The relevant subsections of s.19 of the Residential Tenancies Act, 2018 state:

#### ***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.*

.....

24. At the time the landlord served notice to the tenant, the rent had been in arrears since 02-November-2021, this is supported by the submitted rent ledger (█ #02)
25. The landlord in a month to month lease can give notice when the rent is overdue for 5 days. The landlord can give notice for not less than 10 days after the notice is served on the tenant.
26. The landlord's claim meets the requirements of the *Act*.

**Decision**

- 27. The landlord’s claim for an order for vacant possession of the rental premises succeeds.
- 28. The tenant shall pay to the landlord any costs charged to the landlord by the Office of the High Sherriff should the landlord by required to have the Sheriff enforce the attached Order of Possession.
- 29. The tenant shall pay to the landlord \$27.95 a day beginning 04-November-2021 until such time as the landlord regains possession of their property.

**Issue 4: Reimbursement for cost of hearing**

- 30. As the landlord’s claim has been successful, the tenant shall pay the hearing expense of \$20.00 for the cost of filing this application; receipt for hearing expense is included [REDACTED] #04).

**Summary of Decision**

22. The landlord is entitled to the following:

|                         |                          |
|-------------------------|--------------------------|
| • Rent.....             | \$1,632.85               |
| • Late Fees.....        | 75.00                    |
| • Hearing Expenses..... | <u>20.00</u>             |
| • <b>Total.....</b>     | <b><u>\$1,727.85</u></b> |

An order for vacant possession

The tenant shall:

- Vacate the premises immediately
- Pay the landlord \$1,727.85 for rent, late fees and hearing expenses
- Pay to the landlord \$27.95 a day beginning 04-November-2021 until such time as the landlord regains possession of their property.
- Pay to the landlord any costs charged to the landlord by the Office of the High Sherriff should the landlord by required to have the Sheriff enforce the attached Order of Possession.

November 4, 2021  
Date

[REDACTED]

Jacqueline Williams, Adjudicator  
Residential Tenancies Office