

## Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0050-01

Jacqueline Williams  
Adjudicator

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### Introduction

1. Hearing was called at 9:15 a.m. on 15-February-2022
2. The applicants, [REDACTED] and [REDACTED] did not attend. They submitted an Authorized Representative form (LL#01) naming [REDACTED] as their agent, he is the Landlord Agent listed on the Rental Agreement (LL#02). [REDACTED] attended the conference and will be hereinafter referred to as “the authorized representative.”
3. The respondents, [REDACTED] and [REDACTED] hereinafter referred to as “tenant1 and tenant2” did not attend.

### Preliminary Matters

4. The tenants were not present or represented at the hearing and I was unable to reach them 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 respondents’ absence so long as they have been properly served. The authorized representative submitted an affidavit (LL#02) with the application stating that he had served the tenants with notice of the hearing, in person, by handing both packages to tenant1, on 05-December-2021. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlords, I proceeded with the hearing in their absence.
5. The authorized representative amended his claim of rent \$999.00 and late fees \$45.00 to include arrears up to present day: rent with late fees included \$4,255.00.

### Issues before the Tribunal

6. The landlord is seeking:
  - Rent and late fees \$4,255.00

- Vacant Possession of the Rental Premises
- Hearing expenses reimbursed \$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 decision are the following sections of the *Residential Tenancies Act, 2018*: Section 15: Fee for failure to pay rent, and Section 19: Notice where failure to pay rent.

## Issue 1: Rental arrears and late fees \$4,255.00

### Relevant Submissions

9. The authorized representative submitted the rental agreement (LL#03) between the landlords and the tenants. He is named as the Landlord Agent on the document. The tenants signed the agreement on 22-March-2021 and took possession on 15-April-2021. Their agreement is for a monthly term. The rent is \$1,000.00 per month, utilities are not included. The rental period is from the 1<sup>st</sup> day of the month to the last; with rent due on the 1<sup>st</sup> day of each month. The tenants paid \$750.00 Security deposit on 05-April-2021 and the landlords are still in possession of that deposit. The authorized representative said that tenant1 is still living at the rental unit; he is unsure if tenant2 is still there.
10. The authorized representative submitted the rent ledger (LL#04). He said that the tenants rent started to fall behind in the summer, however, rent was still being paid. In September the rent wasn't paid until 17-September-2021.
11. In October the rent was behind again; at this time the landlords started charging late fees. The rent came in three separate installments and on 19-October-2021, the full rent was covered including late fees.
12. Once again in November the rent was late and late fees were applied. The last payment the received was on 19-October-2021. The authorized representative is requesting that the rent and late fees be paid totaling \$4,255.00.

## Analysis

13. Non-payment of rent is a violation of the rental agreement (LL#03). The landlord's rent ledger includes the late fees and rent up to, and including, February 2022.
14. The rent ledger shows late fees being calculated totaling \$246.00. 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.*

Subsequently, 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.*

15. A landlord may only charge a maximum of \$75.00 in late fees. Once a tenant's rent is paid in full and up-to-date, should a tenant fall into arrears once again, then late fees can be applied again. As the tenant falls into arrears on 02-November-2021 and remains in arrears to present day; on 07-December-2021 the maximum amount of late fee charges are reached.
16. In addition to this, the landlord included the full amount of rent for the month of February 2022 in his calculation. This Tribunal does not consider future rent and a daily rate has been calculated. See table below to show rental arrears with the amendments noted in paragraph 15 and 16 included:

Date	Action	Amount	total
15-Apr-21	rent due	-500.00	-500.00
15-Apr-21	rent paid	500.00	0.00
30-Apr-21	rent paid	1000.00	1000.00
1-May-21	rent due	-1000.00	0.00
1-Jun-21	rent due	-1000.00	-1000.00
1-Jun-21	rent paid	1000.00	0.00
1-Jul-21	rent due	-1000.00	-1000.00
2-Jul-21	rent paid	1000.00	0.00
1-Aug-21	rent due	-1000.00	-1000.00
6-Aug-21	rent paid	1000.00	0.00
1-Sep-21	rent due	-1000.00	-1000.00
17-Sep-21	rent paid	1000.00	0.00
1-Oct-21	rent due	-1000.00	-1000.00
11-Oct-21	rent paid	400.00	-600.00
15-Oct-21	rent paid	400.00	-200.00
19-Oct-21	late fees Oct 2-19	-39.00	-239.00
19-Oct-21	rent paid	240.00	1.00
1-Nov-21	rent due	-1000.00	-999.00
1-Dec-21	rent due	-1000.00	-1999.00
7-Dec-21	late fees Nov 2 - 07 Dec - maximum allowed	-75.00	-2074.00

1-Jan-21	rent due	-1000.00	-3074.00
1-Feb-22	01 - 15 daily rate	-493.20	-3567.20

$\$1,000.00 \text{ rent} \times 12 \text{ months} = \$12,000.00$   
 $\$12,000.00 \text{ divided by } 365 \text{ days} = \$32.88 \text{ a day}$   
 $\$32.88 \text{ a day} \times 15 \text{ days} = \$493.20$

- Based on the testimony of the authorized representative and supporting documentation, I find that the tenants owe the landlords \$3,567.20 for rent and late fees.

### Decision

- The landlords' claim succeeds in the amount of \$3,567.20. The tenants shall pay the landlords \$3,567.20 for rent and late fees.

### Issue 2: Vacant Possession of the Rental Premises

#### Relevant Submissions

- The authorized representative submitted three separate termination notices that were served to the tenants. Each of the termination notices were on a "Landlord's notice to terminate early – cause" form; they are all for failure to pay rent.
- The first termination notice (LL#05) was dated and signed on 08-September-2021. The termination date is for 19-September-2021. The authorized representative said that he served this notice in person to tenant1 on 08-September-2021. He said that later that evening he followed up by sending the notice to the email address provided by the tenant in the rental agreement (LL#03).
- The second termination notice submitted by the authorized representative (LL#06) was dated and signed on 07-October-2021 with a termination date of 17-October-2021. The authorized representative said he served this via the tenants email on 07-October-2021 11:12 a.m.
- The final termination notice submitted by the authorized representative (L#07) was dated and signed on 07-November-2021 with a termination date of 20-November-2021. The authorized representative said he served this via the tenants email on 07-November-2021 7:34 a.m.
- The authorized representative is seeking vacant possession of the rental premises.

### Analysis

- Each of the three notices will be evaluated on its own merit. The first termination notice (LL#05), dated for 08-September-2021 with a termination date of 19-September-2021 was delivered in person to tenant1 and later emailed. This notice meets the standard of the *Act* as follows:

**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.*

25. The tenant was overdue on the rent beginning 02-September-2021, on the date of the notice the tenant was 7 days overdue; meeting Section 19 (1) (b), however, the tenant does pay the full amount of rent due on 17-September-2021 (as per the table in paragraph 16). Therefore as per Section 19 (2) the rental agreement is not terminated and the tenant is not required to move.
26. The landlords' first termination notice is no longer valid.
27. The second termination notice (LL#06) dated for 07-October-2021 with a termination date of 17-October, was served by email on 07-October-2021. As per Section 19 of the Residential Tenancies Act, 2018:

**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.*

*(3) Subsection (2) does not apply where notice is given to a tenant under paragraph (1)(a) or (b) more than twice in a 12 month period.*

28. This termination notice was dated for 07-October-2021 with a termination date of 17-October-2021. This length of notice does not meet the standard of the Act. A notice does not include the day of notice or the day of termination. This notice is therefore only 9 days' notice and this notice is not valid.
29. The final termination notice (LL#07) dated for 07-November-2021 with a termination date of 20-November-2021, was served by email on 07-November-2021. As per Section 19 of the Residential Tenancies Act, 2018:

***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.*

*(3) Subsection (2) does not apply where notice is given to a tenant under paragraph (1)(a) or (b) more than twice in a 12 month period.*

*(4) In addition to the requirements under section 34, a notice under this section shall*

*(a) **be signed by the landlord;***

*(b) state the **date** on which the rental agreement terminates and the tenant is required to vacate the residential premises; and*

*(c) **be served in accordance with section 35.***

30. The notice dated for 07-November-2021 with a termination date of 20-November-2021, is a valid notice. The tenant should have moved on or before 20-November-2021.

## Decision

31. The landlords will be granted an Order of Possession.
32. The tenants shall move immediately
33. The tenants shall pay a daily rate of rent, \$32.88, beginning 16-February-2022 until such time as the landlords regain possession of their property.
34. 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 reimbursed \$20.00

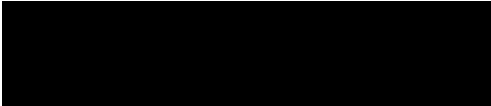
35. The authorized representative submitted the receipt for \$20.00 for the cost of the hearing (LL#08) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

### Summary of Decision

36. The landlords are granted an Order of Possession.
37. The tenants shall move immediately
38. The tenants shall pay a daily rate of rent, \$32.88, beginning 16-February-2022 until such time as the landlords regain possession of their property.
39. 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.
40. The tenants will pay the landlord for rent, late fees \$3,567.20 and the \$20.00 hearing expense totaling \$3,587.20

February 17, 2022

Date



Jacqueline Williams, Adjudicator  
Residential Tenancies Office