

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0073-03

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 2:04 p.m. on 20-January-2022.
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. 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 their application stating that they had served the tenant with notice of the hearing, by registered mail on 13-December-2021, this package was not received, however it is our policy to consider this delivered 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 her absence.
5. The landlord amended the application to show current rent owing from \$1,867.50 to \$2,393.50.

Issues before the Tribunal

6. The landlord is seeking:
 - Rent \$2,393.50
 - Premises vacated

- 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 decision is the following section of the *Residential Tenancies Act, 2018*: Section 19: Notice where failure to pay rent.

Issue 1: Rent \$2,393.50

Relevant Submissions

9. The landlord submitted a rental agreement (LL#02). The tenant took possession of the property 28-September-2018. They have a written monthly lease, the rental period is from the 1st of the month to the end of the month. The rent is \$263.00 per month and is due on the 1st day of each month. There was no security deposit paid.
10. The landlord submitted the rent ledger (LL#03), see below:

Rent ledger

Date	Action	Amount	total
	Opening Balance	0.00	0.00
1-Aug-20	Rent due	263.00	263.00
1-Sep-20	Rent due	263.00	526.00
1-Oct-20	Rent due	263.00	789.00
1-Nov-20	Rent due	263.00	1052.00
1-Dec-20	Rent due	263.00	1315.00
23-Dec-20	rent paid	-300.00	1015.00
1-Jan-21	Rent due	263.00	1278.00
14-Jan-21	Income Support direct payment	-281.00	997.00
14-Jan-21	Income Support direct payment	-131.50	865.50
22-Jan-21	Income Support direct payment	-281.00	584.50
1-Feb-21	rent due	263.00	847.50
1-Feb-21	Income Support direct payment	-131.50	716.00
1-Feb-21	Income Support direct payment	-131.50	584.50
10-Feb-21	rent paid	-50.00	534.50
11-Feb-21	Income Support direct payment	-281.00	253.50
1-Mar-21	Rent due	263.00	516.50
1-Mar-21	Income Support direct payment	-131.50	385.00
1-Mar-21	Income Support direct payment	-131.50	253.50
1-Apr-21	Rent due	263.00	516.50
1-Apr-21	Income Support direct payment	-131.50	385.00
1-Apr-21	Income Support direct payment	-131.50	253.50

1-May-21	Rent due	263.00	516.50
1-Jun-21	Rent due	263.00	779.50
28-Jun-21	Income Support direct payment	-526.00	253.50
1-Jul-21	Rent due	263.00	516.50
8-Jul-21	Income Support direct payment	-263.00	253.50
1-Aug-21	Rent due	263.00	516.50
1-Sep-21	Rent due	263.00	779.50
1-Oct-21	Rent due	263.00	1042.50
1-Nov-21	Rent due	263.00	1305.50
1-Dec-21	Rent due	263.00	1568.50
1-Jan-21	Rent based on daily rate to hearing date Jan 01-20	173.00	1741.50

Daily rate: \$263 x 12 months = \$3158.00
\$3158 divided by 365 days = \$8.65 a day
\$8.65 x 20 days to hearing date = \$173.00

11. The landlord pointed out in the rent ledger that the tenant is in arrears from the 02-August-2020 to present day.
12. The landlord is seeking payment for overdue rent in the amount of \$2,393.50.

Analysis

13. Non-payment of rent is a violation of the rental agreement (LL#02). The landlord has submitted a rent ledger and provided testimony to show rent owed.
14. The rent ledger display in paragraph 10, reflects the rent ledger submitted by the landlord (LL#03). The January 2021 rent has been calculated to a daily rent amount; as this board does not consider future rent. The rent for January 2021 is shown as \$173.00 for the period of January 01-20. In addition to this amendment, there was an error in the original ledger, the 11-February-2021, \$281.00 payment was placed in the debt column, this has been corrected and has resulted in a lesser amount due.
15. I accept the evidence submitted by the landlord, as well as, her testimony of rent owed. The tenant shall pay the landlord \$1,741.50 for rent owed.

Decision

16. The landlord's claim for rent succeeds in the amount of \$1,741.50.

Issue 2: Vacant Possession of the Rental Premises

Relevant Submissions

17. The landlord submitted a letter of termination (LL#04) that was addressed to the tenant on 01-October-2021. The letter states that the tenant's rental agreement is terminated,

for the rental address, as of 31-October-2021, for violation of Section 19 of the *Residential Tenancies Act, 2018*. The notice is signed by the landlord.

18. The landlord said that the letter was sent on the day signed, 01-October-2021, by registered mail. She tracked the letter and it was processed on 05-October-2021.

Analysis

19. 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),

(a) where the residential premises is rented from week to week and the amount of rent payable by a tenant is overdue for 3 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 3 days after the notice is served on the tenant; and

(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.

20. The tenant's rent fell into arrears on 02-August-2021, as shown in the table in paragraph 10. This exceeds the 5 day waiting period required by the *Act*.
21. The notice of termination (LL#04) meets the requirements of the *Act*. The tenant should have vacated on 31-October-2021.

Decision

22. The landlord's claim for vacant possession succeeds.
23. The tenant shall move immediately.
24. The tenant will pay a daily rate of rent to the landlord beginning 21-Jan-2021 of \$8.65 a day, as per the calculation in the table in paragraph 10, until such time as the landlord regains possession of the rental premises.

25. The tenant shall pay to the landlord any costs charged to the landlord, by the Office of the High Sherriff, should the landlord be required to have the Sheriff enforce the attached Order of Possession

Issue 3: Hearing expenses reimbursed \$20.00

26. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#06) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

Summary of Decision

27. The tenant shall:
- Pay the landlord \$1,741.50 for rent and \$20.00 for the cost of filing this application, for a total of \$1,742.50.
 - Pay a daily rate of rent to the landlord, beginning 21-Jan-2021, of \$8.65 a day, 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 be required to have the Sheriff enforce the attached Order of Possession
 - Move immediately

The landlord is granted An Order of Vacant Possession.

January 28, 2022
Date

