

## Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0081-03

Jacqueline Williams  
Adjudicator

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### Introduction

1. Hearing was called at 11:11 a.m. on 20-January-2022
2. The applicants, are [REDACTED] and [REDACTED] attended the teleconference on behalf of herself and her spouse, and she will hereinafter referred to as “the landlord.”
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 her 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 she has been properly served. The landlord submitted an affidavit (LL#01) with her application stating that she had served the tenant with notice of the hearing, by registered mail on 29-December-2021. It is the policy of this tribunal to consider registered mail 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.

### Issues before the Tribunal

5. The landlord is seeking:
  - Vacant possession of the premises

### Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
7. Also relevant and considered in this decision are the following section of the *Residential Tenancies Act, 2018*: Section 19: Notice where failure to pay rent.

**Issue 1: Vacant Possession of the Rental Premises**

Relevant Submissions

8. The landlord said that she purchased the house in September and provided receipt of same (LL#07). At that time, the tenant was already living in the apartment. The previous owner had given the tenant a termination notice, however, she is still living there.
9. When the landlord first bought the house the tenant was renting under the agreement with the previous owner, her rent at that time was \$620.00 a month from the 1<sup>st</sup> to the end of each month, the tenant had paid a security deposit of \$300.00. Rent was due on the 1<sup>st</sup> day of each month, but they had an understanding that she would pay half the rent on the 1<sup>st</sup> and 15<sup>th</sup> day of each month.
10. When the landlord bought the house the security deposit transferred to her; she still is in possession of the deposit.
11. In October the landlord sent a text to the tenant (LL#02) saying that there would be a rent increase on 01-December-2021, the rent would then be set at \$850.00 a month.
12. The tenant agreed to this increase and requested that she still be able to pay twice a month. The landlord agreed to a payment of \$425.00 on the 1<sup>st</sup> and 15<sup>th</sup>.
13. The Landlord said that on 15-November-2021 that she didn't receive the rent payment from her tenant; she included her bank information showing the payments that came in (LL#03). Her ledger is as follows:

Rent ledger

1-Oct-21	rent due		620.00	620.00
1-Oct-21		rent paid	-310.00	310.00
15-Oct-21		rent paid	-310.00	0.00
1-Nov-21	rent due		620.00	620.00
1-Nov-21		rent paid	-310.00	310.00
1-Dec-21	rent due		825.00	1135.00
6-Dec-21		rent paid	-300.00	835.00
1-Jan-22	rent due		825.00	1660.00

14. On 21-December-2021 the landlord said she placed a “landlord’s notice to terminate early – cause” form, for failure to pay rent (LL#03) on the tenant’s door on 21-December-2021. The notice is dated and signed on 21-December-2021, with a termination date of 01-January-2022.
15. The tenant continues to live there.

## Analysis

16. Section 19 of the *Residential Tenancies Act, 2018*, says:

### 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.

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17. As indicated in the table in paragraph 13, the tenants rent is overdue the day after the 15-November-2021 payment is due. As per the agreement in paragraph 12.
18. At the time the landlord has served the notice the tenant’s rent is in arrears for more than the 5 days required. The notice gives the tenant 10 clear days to vacate.
19. The notice meets the standard of the Act and is a valid notice.
20. The tenant should have moved on 01-January-2022.

## Decision

21. The landlord’s claim for an order for vacant possession of the rental premises succeeds.
22. The tenant should have vacated the property on 01-January-2022. The tenant is to vacate the property immediately.

23. 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

**Hearing Expenses**

24. The landlord incurred the cost of \$33.44 to file this application: \$20.00 filing fee (LL#06) and \$13.44 registered mail with Canada Post (LL#07) and provided the receipts for both.
25. As the claim is successful the tenant shall pay the total of these expenses from the damage deposit.
26. The landlord shall retain \$33.44 of the security deposit for reimbursement of the hearing expenses she incurred.

**Summary of Decision**

27. The landlord is entitled to:
- An Order of Vacant Possession
  - Retain \$33.44 of the security deposit for the reimbursement of the hearing expenses

The tenant shall:

- Vacate the premises immediately
- 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

January 26, 2022  
Date

