

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0248-05

Jacqueline Williams
Adjudicator

Introduction

1. The hearing was called at 01:16 p.m. on August 16, 2021 via teleconference.
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.

Issues Before the Tribunal

4. The landlord is seeking the following:
 - An order for payment of rent in the amount of \$5,778.65, and
 - An order for vacant possession of the rented premises
 - Reimbursement of hearing expenses

Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
6. Also relevant and considered in this case is section 19 of the *Residential Tenancies Act, 2018*: notice when failure to pay rent, section 34: requirements for notices, section 35: Service of documents.

Preliminary Matters

7. The tenant was not present or represented at the hearing and we did not have a current phone number to reach her 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 with his application stating that she had served the tenant with notice of the hearing, by registered mail, the tenant did not receive the mail. This is still considered good service. 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.
8. The landlord amended her application to reflect rent owing to today's date and she provided a current rent ledger (█ #04). The amount now owing has increased from \$5,252.62 to \$5,778.65.

Issue 1: Payment of rent in the amount of \$5,778.65

Relevant Submissions

9. The landlord provided the lease agreement with the tenant effective September 2013. The lease is for \$768.00 a month due on the first of the month. There was no damage deposit paid. On February 01, 2015 this rent a month changed to \$263.00 due on the first of each month.
10. Over the past three years █ has paid a total of \$5,561.85 and the tenant has paid \$363.00.
11. The landlord submitted an up to date rent ledger which indicates rent owing beginning January 01, 2018 to the present day, totaling \$5,778.65.

Analysis

12. The landlord has shown documentation (█ #04) indicating the rent paid and owing.
13. Non-payment of rent violates the lease agreement signed by the tenant and violates the contract.
14. The tenant owes the landlord the outstanding rent.

15. I calculate the amount owing to be \$5,654.04 (\$5,515.65 for the period ending July 31, 2021 and \$138.40 for August (\$263 per month x 12 months = \$3156.00 divided by 365 days = \$8.65 per day x 16 days)).

Decision

16. The landlord's claim for a payment of rent succeeds in the amount of \$5,654.04.
17. The tenant shall pay a daily rate of rent in the amount of \$8.65, beginning 17 August 2021, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Vacant Possession of the Rental Premises

Relevant Submission

18. The Landlord served a letter giving the tenant notice to vacate dated March 10, 2021 [REDACTED] #07).
19. The letter was sent registered mail with Canada Post to the address where the tenant is currently residing. The tenant did not collect the letter. However, once a letter is sent via registered mail it is considered delivered after 5 days.

Analysis

20. 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.

(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.

21. At the time the Landlord served notice to the tenant, the rent had been in arrears since January of 2018 (█#04).
22. 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.
23. The landlord's claim meets the standard of the *Act*.

Decision

24. The landlord's claim for an order for vacant possession of the rented premises succeeds.
25. 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: Reimbursement for cost of hearing

26. As the landlord's claim has been successful, the tenant shall pay the hearing expense (█#03) of \$20.00 for the cost of filing this application.

Summary of Decision

27. The landlord is entitled to the following:
 - Rent owing of \$5,654.04, as well as, the \$20.00 filing fee. For a total of \$5,674.04.
 - A payment of a daily rate of rent in the amount of \$8.65 per day beginning August 17, 2021 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.

August 25, 2021

Date



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