

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0287-05

Jacqueline Williams
Adjudicator

Introduction

1. The hearing was called at 9:32 am on 07 September 2021 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” was present at the hearing.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant”, attended the hearing.

Preliminary Matters

4. The landlord submitted an affidavit of service ([REDACTED] #01) declaring that he served the tenant personally on August 25, 2021 of notification of hearing.

Issues before the Tribunal

5. The landlord is seeking the following:
 - An order for vacant possession of the rented 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 is section 19 of the *Residential Tenancies Act, 2018*; notice where failure to pay rent.

Issue: Termination Notice for Failure to pay Rent

Relevant Submissions

The Landlords' Position

8. The landlord and tenant entered into a verbal rental agreement, for the property on [REDACTED] for \$1050.00 per month, due on the first of each month, with a \$500.00 damage deposit paid on or about March 14, 2019. The tenant took possession on March 14, 2019.
9. The landlord stated that rent has been paid late on an ongoing basis, however, until this past April the rent was still paid sometime throughout the month.
10. The tenant pays half of the rent \$525.00 and she has a roommate who has the other part paid from government funding.
11. The government funding portion of the rent has not been paid since April.
12. The landlord stated that the lease agreement is with the tenant and she is responsible for the payment of rent.
13. The landlord served the tenant with a Notice to Terminate Early on June 04, 2021 with an eviction date of June 15, 2021, in accordance with the act.
14. The tenant paid \$100.00 of the outstanding rent in June and paid the remainder in August. The \$525.00 for September is currently outstanding.

The Tenant's Position

15. The tenant agrees that there is a verbal rental agreement and states she took possession on March 14, 2019.
16. The tenant has a roommate whose portion of the rent is not being paid. She has been paying her portion of the rent. Sometimes the payment is made after the 1st of each month, but her share is always paid and that the landlord accepted this in the past.
17. The tenant has paid the amount outstanding to August 01, 2021. The roommate's share (\$525.00) is still due for September 01, 2021.
18. The tenant has been struggling to find new housing, but is actively looking.

Analysis

19. The landlord served the tenant within the timeframes outlined in the *Act*.
20. There is agreement by both parties that the rent was in arrears due to the government funding not being paid.
21. Section 19 of the *Residential Tenancies Act, 2018* states:

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.

...

22. The tenant did make payments on the rental arrears, however the overdue rent was not paid before the last day of the termination notice.

Decision

23. The landlord is entitled to the following:
 - The claim for vacant possession succeeds. Although the tenant has paid the outstanding rent due, it was not paid prior to the date of termination.

The landlords' notice of termination meets the standard in the Residential Tenancies Act 2018. The tenant ought to have vacated the premises on June 15, 2021.

- The tenant shall vacate the rented premises immediately.
- 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.

08 September 2021

Date

