

## Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0511-05

Jacqueline Williams  
 Adjudicator

### Introduction

1. Hearing was called at 3:11 p.m. on 14-December-2021.
2. The applicant, [REDACTED] represented by [REDACTED] and [REDACTED] hereinafter referred to as “landlord1” and “landlord2,” attended by teleconference.
3. The [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 him 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 he has been properly served. Landlord1 submitted an affidavit (LL#01) with their application stating that she had served the tenant with notice of the hearing, electronically at an email address provided to them by the tenant. The notice was sent on 19-November-2021. 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 his absence.
5. On 28-September-2021 there was a hearing for file number [REDACTED] that resulted in the following order being issued:

- Orders that the tenant, [REDACTED] pay to the landlord, [REDACTED] a total of \$5,395.00, determined as follows:

Rent owing.....	\$5,300.00
Late fees.....	75.00
Hearing Expenses.....	<u>20.00</u>
Total.....	<u>\$5,395.00</u>

6. This decision will not consider the issues previously decided by order for file number [REDACTED]
7. The landlord is seeking late fees, the late fees have already been awarded as shown in paragraph 5; this order is still enforceable.

### **Issues before the Tribunal**

8. The landlords are seeking:
  - Rent paid \$3,975.00.
  - Premises vacated
  - Hearing expenses reimbursed \$20.00

### **Legislation and Policy**

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

### **Issue 1: Rent paid \$3,975.00**

#### Relevant Submissions

11. Landlord1 submitted a rental agreement (LL#02), as well as, a Leaseholder Addendum (LL#03) transferring the lease from a previous tenant to the current tenant. The previous tenant had signed for a six month term from 01-March-2021 until 31-August-2021. The current tenant took over this lease agreement and moved in on 01-May-2021. The rent is \$1,325.00 a month. The rental period is from the 1<sup>st</sup> day of the month until the last; rent is due on the first of each month. The current tenant paid the security deposit of \$662.50, to the first tenant, who had paid to the landlord. The landlord is still in possession of this deposit.
12. Landlord1 submitted a rent ledger (LL#05), which shows that no rent has been paid since May 2021. The order [REDACTED] previously awarded includes rent up until the end of September 2021. The landlord is currently requesting rent for October, November and December, totaling 3 x \$1,325.00 = \$3,975.00.
13. Landlord1 said that the tenant's apartment shares a parking lot with their office, she feels it is clear to her that he has no intention of paying rent because their office is open and he could come in at any time to make payment arrangements.

### **Analysis**

14. Non-payment of rent is a violation of the rental agreement (LL#02).

15. The tenant owes the full amount of rent for both October and November, a daily rate for December is as follows  $\$1,325.00 \times 12 \text{ months} = \$15,900.00$ .  $\$15,900$  divided by 365 days  $\$43.56$  a day. As of the day of the hearing  $\$43.56 \times 14 \text{ days} = \$609.84$  owed to date for December.
16. The tenant therefore owes  $\$3,259.84$  for rent up to and including the day of the hearing.  $(1,325.00 + 1,325.00 + 609.84 = \$3,259.84)$

## **Decision**

17. The landlords' claim for rent arrears succeeds in the amount of  $\$3,259.84$ .

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

### Relevant Submissions

18. Landlord1 submitted a Landlord's Notice to Terminate Early – Cause form, for failure to pay rent.
19. The notice was dated for 21-October-2021 with a termination date of 02-November-2021.
20. Landlord1 said that the maintenance staff served the notice by posting it on the tenant's apartment door on 21-October-2021.

## **Analysis**

21. 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.

....

22. As per paragraphs 12 and 16 it has been shown that the tenant has owed rent since 02-June-2021.
23. The landlords' termination notice meets the standard outlined in the Act.
24. The tenant shall move immediately.
25. The tenant will pay a daily rate of rent commencing 15-December-2021 at a rate of \$43.56 per day as per paragraph 15.

### **Decision**

26. The landlords' claim for an Order for Vacant Possession of the rental premises succeeds.
27. 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.
28. The tenant shall pay a daily rate of rent commencing 15-December-2021 of \$43.56 until such time as the landlord regains possession of the property.

### **Issue 3: Hearing expenses reimbursed \$20.00**

29. Landlord1 submitted their hearing expenses (LL#07) of \$20.00 for the cost of filing this application. As the landlord has been successful, the tenant shall reimburse the landlord for this cost.

### **Summary of Decision**

30. The landlord is entitled to the following:
  - Rent owing \$3,259.84, as well as, the \$20.00 filing fee. For a total of \$3,279.84.
  - A payment of a daily rate of rent in the amount of \$43.56 per day beginning 15-December-2021 and continuing to the date the landlord obtains possession of the rental unit.
  - An order for vacant possession of the rental unit.

The tenant shall:

- Vacate the premises immediately

- 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.

December 21, 2021  
Date

