

## Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0556-05

Jacqueline Williams  
Adjudicator

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### Introduction

1. Hearing was called at 11:16 a.m. on 14-December-2021.
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 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 his application stating that he had served the tenant with notice of the hearing, by giving it personally to her boyfriend, GW who lives with her, on 01-December-2021 by placing it into his hand. 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. On 30-March-2021 there was a hearing, for file number [REDACTED] that resulted in the following order being issued:

- Orders that the tenant, [REDACTED] shall pay to the landlord, [REDACTED] a total of **\$1,584.80** determined as follows:

• Rent Owing.....	\$1489.80
• Late Fees.....	75.00
• Hearing Expenses.....	<u>20.00</u>

• **Total owing to the Landlord**

**\$1,584.80**

- Orders that the tenant, [REDACTED] shall pay to the landlord, [REDACTED] a daily rate of rent in the amount of **\$24.66** beginning **31-March-2021** and continuing until the landlord obtains vacant possession of the rental property.
  - Orders that the tenant, [REDACTED] shall pay to the landlord, [REDACTED] any costs charged to the landlord for the certification of an order or by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.
6. This decision will not consider the issues previously decided by order for file number [REDACTED] and dated 06-April-2021.
7. The landlord applied for rent arrears in the amount of \$750.00. Rent was calculated for a daily rate as shown in paragraph 5; this order is still enforceable.
8. The landlord also applied for late fees in the amount of \$75.00. Late fees were awarded as shown in paragraph 5; this order is still enforceable.

**Issues before the Tribunal**

9. The order for vacant possession identified in [REDACTED] based on a previous termination notice has expired and is no longer enforceable. The landlord is seeking vacant possession of the rental premises based on a new termination notice and reimbursement of hearing expenses for this new application.

**Legislation and Policy**

10. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
11. 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

12. The landlord said that he entered into a written rental agreement with the tenant beginning on 01-October-2020. The agreement is for a monthly term, for \$750.00 a month, utilities are not included. The rental period is from the 1<sup>st</sup> to the end of each month and rent is due on the 1<sup>st</sup>. He said that the tenant paid a \$375.00 security deposit and he is still in possession of the deposit.

13. The landlord said that he had already had a hearing, as per paragraph 5, after the decision was made, the tenant paid rent and he then decided not to go ahead with the eviction.
14. The tenants are again in rent arrears and he submitted a rent ledger (LL#02) showing that there has been no rent paid since 01-November-2021.
15. The landlord said he served the tenants with a landlord's notice to terminate early signed on 29-November-2021 with a termination date of 10-December-2021. He said he placed it in the tenant's mailbox on 29-November-2021 and then sent a text to her, saying that he had placed the notice there. He said both the tenant and her boyfriend followed up with him after receiving the notice.
16. The landlord said that in addition to rent not being paid, all of the windows in the rental unit have been beaten out. He said that the tenant's replaced the window in the front of the house, which was beaten out last spring, but the other three windows, along the side of the house, are still broken. He is concerned that there is additional damage inside and he is concerned about the wet, cold weather and the damage to the inside of the unit.
17. The landlord said that the city is demanding that repairs be done to the windows and have threatened to go in, do the repairs and bill him for the work.
18. The landlord said that the tenant has changed the locks and he is unable to access the rental, he also said he doesn't want to change the windows until after they move because he is concerned that the windows may be broken again.
19. The landlord said he requested an emergency eviction due to concerns about the damage the tenants might be doing to the unit.

## **Analysis**

20. The landlord submitted the rent ledger (LL#02) indicating that the rent has not been paid for November and December.
21. The Landlord's notice to terminate early – cause (LL#03) is for failure to pay rent. Rent has been overdue since the 2<sup>nd</sup> of November when the landlord served the termination notice to the tenant.
22. 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,

.....

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.

23. The notice served by the landlord meets the requirements of the Act, the tenants should have vacated the property on 10-December-2021.
24. The landlord's application succeeds.

### **Decision**

25. The landlord's claim for an order for vacant possession of the rental premises succeeds.
26. 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.

### **Hearing Expenses \$20 reimbursed**

27. The landlord submitted his receipt for the expense of filing an application (LL#04). Although the landlord's claim has been successful, he was already provided an Order of Possession and shall not be reimbursed for this cost.

### **Summary of Decision**

28. The landlord is entitled to the following:
  - An order for vacant possession
  - 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.

December 21, 2021  
Date

