

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0588-05

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:16 a.m. on 17-February-2022.
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 there was no phone number 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 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 29-December-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 her absence.
5. On 08-December-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, the [REDACTED]. [REDACTED] a total of \$2,710.00, for rent and hearing expenses and that the [REDACTED] retain the security deposit of \$300.00 determined as follows:
6. This decision will not consider the issues previously decided by order for file number [REDACTED]

7. The landlord is seeking rent, and the security deposit which have already been awarded as shown in paragraph 5; this order is still enforceable, these issues are amended for this file as shown below.

Issues before the Tribunal

8. The landlord is seeking:
 - Rent paid \$1,196.00
 - 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 \$1,196.00

Relevant Submissions

11. The landlord submitted a rental agreement (LL#03). The tenant took possession on 08-December-2020. The agreement begins 01-January-2021 for a monthly term. The rent is \$598.00 a month which included a \$35.00 heat and light surcharge. The rental period is from the 1st day of the month until the last; rent is due on the first day of each month. The tenant paid the security deposit of \$300.00, the landlord has already been awarded this deposit (LL#02).
12. The landlord submitted a rent ledger (LL#04), which shows that no rent has been paid since July 2021. The order [REDACTED] previously awarded includes rent up until the end of December 2021. The landlord is currently requesting rent for January and February, totaling 2 x 598.00 = \$1,196.00.

Analysis

13. Non-payment of rent is a violation of the rental agreement (LL#03).
14. The tenant owes the full amount of rent for January, a daily rate for February is as follows $\$598.00 \times 12 \text{ months} = \$7,176.00$. $\$7,176$ divided by 365 days $\$19.66$ a day. As of the day of the hearing $\$19.66 \times 17 \text{ days} = \334.22 owed to the date of the hearing.
15. The tenant therefore owes $\$932.22$ for rent up to and including the day of the hearing. ($596.00 + 334.22 = \$932.22$)

Decision

16. The landlord's claim for rent arrears succeeds in the amount of \$932.22.

Issue 2: Vacant Possession of the Rental Premises

Relevant Submissions

17. The landlord submitted a Landlord's Notice to Terminate Early – Cause form, for failure to pay rent (LL#05).
18. The notice was dated for 08-December-2021 with a termination date of 19-December-2021.
19. The landlord said that she served the notice by email at 11:43 a.m. on 08-December-2021.

Analysis

20. 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.

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21. As per paragraphs 12 and 15 it has been shown that the tenant has owed rent since July 2021.
22. The landlords' termination notice meets the standard outlined in the Act.

23. The tenant shall move immediately.
24. The tenant will pay a daily rate of rent commencing 18-February-2022 at a rate of \$19.66 per day as per paragraph 15.

Decision

25. The landlords' 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.
27. The tenant shall pay a daily rate of rent commencing 18-February-2022 of \$19.66 until such time as the landlord regains possession of the property.

Issue 3: Hearing expenses reimbursed \$20.00

28. The landlord submitted their hearing expenses (LL#06) 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

29. The landlord is entitled to the following:
 - Rent owing \$932.22, as well as, the \$20.00 filing fee. For a total of \$952.22.
 - A payment of a daily rate of rent in the amount of \$19.66 per day beginning 18-February-2022 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.

February 21, 2022

Date

