

## Residential Tenancies Tribunal

Decision 20-0392-05

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 1:04 pm on 19 October 2020 via teleconference.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as “landlord1” and “landlord2”, respectively, participated in the hearing. The respondent, [REDACTED], hereinafter referred to as “the tenant”, did not participate.

### Issues before the Tribunal

3. The landlords are seeking an order for vacant possession of the rented premises.

### Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this case is section 19 of the *Residential Tenancies Act, 2018* and rule 29 of the Rules of the Supreme Court, 1986.

### Preliminary Matters

6. The tenant was not present or represented at the hearing. I spoke with him by telephone before the hearing began and he informed me that he would not be participating in 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 a 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 with his application stating that he served the tenant with notice of the hearing by e-mail and by text-message on 07 October 2020. Landlord1 pointed out that the tenant had supplied him with his e-mail address and cellular number in the submitted rental agreement. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlords, I proceeded with the hearing in his absence.

## **Issue 1: Vacant Possession of the Rented Premises**

### **Relevant Submissions**

7. Landlord2 stated that they had entered into a 1-year, fixed-term lease with the tenant, commencing 03 July 2020, and a copy of that executed agreement was submitted with their application. The agreed rent was set at \$860.00 per month and it is acknowledged in the lease that the tenant had paid a security deposit of \$430.00.
8. Landlord2 stated that since the tenant moved into the property he has only made 2 rent payments to the landlords: \$430.00 was paid on 29 July 2020 and another \$430.00 was paid on 03 August 2020. Those payments cover the rent for July 2020 but no rent has been paid for the months of August, September or October 2020.
9. Because of this issue with the rent, the landlords had their nephew, ■■■, serve the tenant with a termination notice on 20 August 2020 and a copy of that notice was submitted with their application. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 31 August 2020.
10. The landlords stated that the tenant has not moved out as required they are seeking an order for vacant possession of the rented premises.

### **Analysis**

11. 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.*

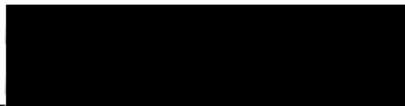
12. I accept landlord2's testimony concerning the rent they have received since the tenant moved into the property. According to that testimony, the tenant had been in rental arrears since the beginning of August 2020 when the notice was issued and no payments have been received since.
13. As the termination notice was properly served and as it meets the timeframe requirements set out in this section of the Act, it is a valid notice.

#### **Decision**

14. The landlords' claim for an order for vacant possession of the rented premises succeeds.
15. The tenant shall pay to the landlords any costs charged to the landlords by the Office of the High Sheriff should the landlords be required to have the Sheriff enforce the attached Order of Possession.

20 October 2020

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
John R. Cook  
Residential Tenancies Tribunal