

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0014-02

Jacqueline Williams
Adjudicator

Introduction

1. The hearing was called at 1:03 pm on 09 August 2021 via teleconference.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED], hereinafter referred to as "landlord1" and "landlord2", respectively.
3. The respondent, [REDACTED], hereinafter referred to as "the tenant", attended the hearing.

Preliminary Matters

4. Landlord1 amended the rental arrears to reflect 4 months rent at \$675.00 per month (May – August) to show \$2,700.00 currently owing.

Issues before the Tribunal

5. The landlord is seeking the following:
 - An order for a payment of rent in the amount of \$2,700.00
 - An order to retain the damage deposit towards rent owing
 - 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 1: Rent - \$2,700.00

Relevant Submissions

The Landlords' Position

8. The landlord and tenant entered into a written, 12 month term, rental agreement, for the property on [REDACTED] for \$675.00 per month with a \$506.25 damage deposit paid November 25, 2020. The tenant took possession on November 25, 2020.
9. The landlord provided the rental agreement ([REDACTED] #03), dated November 25, 2020 effective December 01, 2020, for one year. The cost of rental is \$675.00 per month.
10. The tenant paid a damage deposit of \$506.25.
11. Included in the application, the landlord submitted a copy of the Rent Ledger ([REDACTED] #05) and stated that the tenant owes four months from May – August, 2021.

The Tenant's Position

12. The tenant agrees with the rental agreement and states she took possession on November 25, 2020.
13. The tenant agrees that she owes the amount of rent stated by the landlord.
14. The tenant believes she will be able to pay the amount owing in a few weeks.

Analysis

15. With respect to the arrears being claimed, the landlord and tenant agree that rent is owed. As the landlord is also seeking an order for vacant possession of the rented premises, I find that he is entitled to a payment of rent to the day of the hearing and per diem thereafter.
16. I calculate the amount owing to be \$2242.71 (\$2023.00 for the period ending 31 July 2021 and \$199.71 for August 2021 (\$675.00 per month x 12 months = \$8,100.00 per year ÷ 365 days = \$22.19 per day x 9 days)).

Decision

17. The landlord's claim for a payment of rent and hearing expenses succeeds in the amount of \$2,242.71.
18. The tenant shall pay a daily rate of rent in the amount of \$22.19, beginning 10 August 2021, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Vacant Possession of the Rental Premises

Relevant Submissions

The Landlord's Position

19. Landlord 2 served Notice to Terminate (████#06) due to failure to pay rent on May 27, 2021 with a termination date of June 07, 2021.

The Tenant's Position

20. The Tenant acknowledges receipt of Notice to Terminate.
21. The Tenant also agrees that rent has not been paid since April 2021.

Analysis

22. 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.

23. It has been established that rental arrears exist for a period of 4 months. Non-payment of rent is in violation of the signed rental agreement.
24. The rent was more than 5 days overdue before the landlord termination notice to the tenant was served. The date on the order to vacate was 10 clear days after the notice was served.

Decision

25. The landlords' claim for vacant possession succeeds. The landlords' notice of termination meets the standard in the Residential Tenancies Act 2018. And the tenant ought to have vacated the premises on June 07, 2021.

Issue 3: Security Deposit

Relevant Submissions

The Landlord's Position

26. The landlord provided the rental agreement ([REDACTED] #03) stating that the tenant had paid a security deposit of \$506.25 and receipt of that deposit is accounted for in the submitted rent ledger ([REDACTED] #05).

Decision

27. As the landlord's claim for rental arrears has been successful, he shall retain the deposit as outlined in this decision and attached order.

Issue 4: Hearing Expenses

28. The landlord incurred a cost of \$20.00 for filing this claim ([REDACTED] #02) and is also entitled to reimbursement of that cost from the respondent.

Summary of Decision

29. The landlord is entitled to the following:

- A payment of \$1,736.46 determined as follows:

• Rent and filing fee owing	\$2,242.71
• LESS: Security Deposit(\$506.25)	
• Total	<u>\$1,736.46</u>
- A payment of a daily rate of rent in the amount of \$22.19, beginning 10 August 2021 and continuing to the date the landlord obtains possession of the rental unit,
- 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.

25 August 2021

Date

