

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0044-02

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:45 a.m. on September 8, 2021.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as "landlord1 and landlord2" 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 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. The landlords submitted an affidavit (LL#01) with their application stating that landlord1 had served the tenant with notice of the hearing, in person at the tenant's workplace, on 18-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. The landlords amended their application to reflect the current amount of rent owing from \$1,000.00 to \$1,700.00.

Issues before the Tribunal

6. The landlords are seeking:
 - Rent paid \$1,700.00
 - Security deposit applied against monies owing \$350.00
 - Hearing expense reimbursed \$20.00
 - Premises vacated

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outline in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
8. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 14: Security deposit and Section 19: Notice where failure to pay rent.

Issue 1: Rent paid \$1,700.00

Relevant Submissions

9. The landlords submitted a rental agreement (LL#02) and stated that they entered into the monthly agreement with the tenant beginning 01-September-2020. The rental period is from the 1st to the end of each month. Rent is \$700.00 and is due on the 1st. The tenant paid a security deposit of \$350.00 on 29-August-2021. They are still in possession of the deposit.
10. Landlord1 said that although the agreement is for the tenant to pay the rent on the 1st of each month, the rent was coming in sporadically and often close to the first and middle of each month to coincide with the tenant's payday.
11. Landlord2 said that she reminded the tenant of rent owed each month and she also reminded him that it was due in full on the 1st of each month.
12. They submitted a rent ledger (LL#03) showing when money was paid. Please see table below. Landlord2 said that she would provide this ongoing tally to the tenant so that he would be aware of which month each payment was being credited and so that he would know his outstanding balance.
13. Landlord2 said that the final payment of rent was on 29-October-2021 for a total of \$200.00, after that payment the tenant was still \$200.00 in arrears.

Analysis

14. Non-payment of rent is a violation of the rental agreement (LL#02). To clarify the amount of rent owed, please see ledger below:

Rent Ledger

Date	Action	Amount	total
1-Jan-21	rent due	\$ (700.00)	\$ (700.00)
4-Jan-21	rent paid	\$ 350.00	\$ (350.00)
12-Jan-21	rent paid	\$ 350.00	\$ -
1-Feb-21	rent due	\$ (700.00)	\$ (700.00)
9-Feb-21	rent paid	\$ 350.00	\$ (350.00)
24-Feb-21	rent paid	\$ 350.00	\$ -
1-Mar-21	rent due	\$ (700.00)	\$ (700.00)
15-Mar-21	rent paid	\$ 350.00	\$ (350.00)
1-Apr-21	rent due	\$ (700.00)	\$ (1,050.00)
8-Apr-21	rent paid	\$ 350.00	\$ (700.00)
20-Apr-21	rent paid	\$ 350.00	\$ (350.00)
1-May-21	rent due	\$ (700.00)	\$ (1,050.00)
4-May-21	rent paid	\$ 350.00	\$ (700.00)
18-May-21	rent paid	\$ 350.00	\$ (350.00)
1-Jun-21	rent due	\$ (700.00)	\$ (1,050.00)
2-Jun-21	rent paid	\$ 400.00	\$ (650.00)
10-Jun-21	rent paid	\$ 350.00	\$ (300.00)
29-Jun-21	rent paid	\$ 350.00	\$ 50.00
1-Jul-21	rent due	\$ (700.00)	\$ (650.00)
13-Jul-21	rent paid	\$ 350.00	\$ (300.00)
1-Aug-21	rent due	\$ (700.00)	\$ (1,000.00)
25-Aug-21	rent paid	\$ 700.00	\$ (300.00)
1-Sep-21	rent due	\$ (700.00)	\$ (1,000.00)
3-Sep-21	rent paid	\$ 200.00	\$ (800.00)
10-Sep-21	rent paid	\$ 200.00	\$ (600.00)
1-Oct-21	rent due	\$ (700.00)	\$ (1,300.00)
1-Oct-21	rent paid	\$ 300.00	\$ (1,000.00)
15-Oct-21	rent paid	\$ 300.00	\$ (700.00)
22-Oct-21	rent paid	\$ 300.00	\$ (400.00)
29-Oct-21	rent paid	\$ 200.00	\$ (200.00)
1-Nov-21	rent due	\$ (700.00)	\$ (900.00)
1-Dec-21	rent due	\$ (23.01)	\$ (923.01)

Daily rate calculated for December
 $\$700 \times 12 \text{ months} = \$8,400.00$
 $\$8,400.00 \text{ divided by } 365 \text{ days} = 23.01$
 One day in December \$23.01 owing

15. Note that in the rent ledger submitted (LL#04) there is an error in rent owing in July stating that the final balance in July is \$400.00 when it is actually \$300.00 left owing at the end of July. This impacts the balance by \$100.00 to date.

16. In the above the full amount of December is not included, December is rated as a daily rate and the amount reflects the amount due as of the hearing date.

17. As tabulated in the table in paragraph 14 the tenant owes the landlords \$923.01.

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18. The tenant owes the landlord \$923.01 in rent.

Issue 2: Security deposit applied against monies owing \$350.00

Relevant Submissions

19. As per paragraph 9 and a submitted document showing the rental agreement (LL#02) the landlord stated that the tenant paid a security deposit of \$350.00.

20. The landlord has incurred loss due to rent not paid, see paragraph 18.

Analysis

21. The landlords' claim for rent owed has been successful and they shall retain the security deposit as per section 15 of the *Residential Tenancies Act, 2018*, below:

15. (10) Where a landlord believes he or she has a claim for all or part of the security deposit,

(a) the landlord and tenant may enter into a written agreement on the disposition of the security deposit; or

(b) the landlord or the tenant may apply to the director under section 42 to determine the disposition of the security deposit

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22. The landlord's claim to retain the security deposit of \$350.00 against rent owed succeeds.

Issue 3: Premises vacated

Relevant Submissions

23. The landlords submitted a picture of the Landlord's Notice to Terminate Early – Cause for Failure to pay rent (LL#05) posted on the tenant's door.

24. Landlord1 said he posted the notice on the door on 04-November-2021. The notice is signed by both landlords on 04-November-2021 with a termination date of 15-November-2021.

Analysis

25. On 04-November-2021 the table in paragraph 14 indicates that the tenant is \$900.00 in arrears on his rent; he has been in arrears since 02-July-2021. The tenant is still in arrears on 15-November-2021.

26. 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.

27. The termination notice meets the requirements of the *Act* and is a valid notice.

Decision

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

29. 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.

30. The tenant shall pay to the landlord \$23.01 a day beginning 02-December-2021 until such time as the landlord regains possession of their property.

Issue 4: Hearing expenses reimbursed

31. As the landlord's claim has been successful, the tenant shall pay the hearing expense of \$20.00 for the cost of filing this application; receipt for hearing expense is included (LL#06).

Summary of Decision

32. The landlord is entitled to the following:

• Rent.....	\$ 923.01
• Hearing Expenses.....	20.00
• Retain Security Deposit.....	350.00
• Total.....	<u>\$ 593.01</u>

An order for vacant possession

The tenant shall:

- Vacate the premises immediately
- Pay the landlord \$593.01 for rent, late fees and hearing expenses
- Pay to the landlord \$23.01 a day beginning 02-December-2021 until such time as the landlord regains possession of their property.
- 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 6, 2021

Date

