

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0054-03

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:40 a.m. on 25-October-2021.
2. The applicant, [REDACTED] hereinafter referred to as "the landlord" attended by teleconference.
3. The respondent, [REDACTED] hereinafter referred to as "the tenant" attended by teleconference.
4. The landlord completed an Authorized Representative form [REDACTED] #01), for his daughter [REDACTED] to appear on his behalf, hereinafter referred to as "the authorized representative," she also attended by teleconference.

Preliminary Matters

5. The landlord submitted an affidavit [REDACTED] #02) indicating that the Authorized Representative personally gave the tenant notice of the hearing as well as her hearing package on October 14, 2021 at 12:15 p.m.
6. The Tenant did not believe that she was given this package on October 14th; when asked when she received the package she said about a week and a half ago. As October 14th is a week and a half ago, I proceeded with the hearing.
7. The tenant raised the issue that she has many physical and mental health issues. She had tried to make arrangements to have a worker assist her with the hearing, the worker was not available to attend at the scheduled time. She also has a Doctor's appointment tomorrow; she was requesting a note from the doctor to show that she could not attend the hearing. As there was nothing submitted to show any reason why she could not attend the hearing; I proceeded.

Issues before the Tribunal

8. The Landlord is seeking:
 - Rent paid \$860.00
 - Premises vacated

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 case are sections 19: Notice Where Failure to Pay Rent and 35: Service of Documents, of the *Residential Tenancies Act, 2018*.

Issue 1: Rent paid \$860.00

Landlord's Position

11. The Landlord and Tenant entered into a written monthly rental agreement (████#03), the Tenant moved in the last week of January 2021 and payment for rent began on February 01, 2021. The Tenant pays \$400.00 rent on the 1st and 15th of the month. The Tenant also paid a security deposit of \$400.00; the Landlord is still in possession of the security deposit.
12. The Landlord submitted a Rent Ledger (████#04) ending on September 01, 2021 with an amount owing at that time of \$1,660.00.
13. The Landlord updated the ledger to present day, see below paragraph 17.

Tenant's Position

14. The Tenant said that she was violently robbed in mid-July and lost the \$400.00 payment for that half of the month. In addition to this, she reports that changes to the CERB and her employment impacted her ability to pay the rent.
15. The Tenant believes that the rent owing is \$460.00. She stated that she could not go through her banking information without assistance from her worker.
16. The Tenant said that she is now back to work and repayment of this rent is no longer an issue for her.

Analysis

17. The Landlord's ledger indicates the full amount of rent due on the 1st of each month. Paragraph 11 states that the rent was due on the 1st and the 15th of each month. Please see the updated rental ledger below.

Rent Ledger

Date	Action	Amount	total
25-Jan-21	Feb rent paid	\$ 800.00	800
1-Feb-21	rent due	\$ (400.00)	400.00
15-Feb-21	rent due	\$ (400.00)	-
1-Mar-21	rent due	\$ (400.00)	(400.00)
4-Mar-21	rent paid	\$ 625.00	225.00
15-Mar-21	rent due	\$ (400.00)	(175.00)
1-Apr-21	rent due	\$ (400.00)	(575.00)
1-Apr-21	rent paid	\$ 500.00	(75.00)
15-Apr-21	rent due	\$ (400.00)	(475.00)
29-Apr-21	rent paid	\$ 400.00	(75.00)
1-May-21	rent due	\$ (400.00)	(475.00)
14-May-21	rent paid	\$ 340.00	(135.00)
15-May-21	rent due	\$ (400.00)	(535.00)
1-Jun-21	rent due	\$ (400.00)	(935.00)
1-Jun-21	rent paid	\$ 400.00	(535.00)
15-Jun-21	rent due	\$ (400.00)	(935.00)
16-Jun-21	rent paid	\$ 400.00	(535.00)
30-Jun-21	rent paid	\$ 400.00	(135.00)
1-Jul-21	rent due	\$ (400.00)	(535.00)
15-Jul-21	rent due	\$ (400.00)	(935.00)
1-Aug-21	rent due	\$ (400.00)	(1,335.00)
15-Aug-21	rent due	\$ (400.00)	(1,735.00)
19-Aug-21	rent paid	\$ 800.00	(935.00)
1-Sep-21	rent due	\$ (400.00)	(1,335.00)

15-Sep-21	rent due		\$ (400.00)	\$ (1,735.00)
17-Sep-21		rent paid	\$ 800.00	\$ (935.00)
1-Oct-21	rent due		\$ (400.00)	\$ (1,335.00)
8-Oct		rent paid	\$ 360.00	\$ (975.00)
15-Oct-21	rent due daily rate		\$ (289.30)	\$ (1,264.30)
17-Oct-21		rent paid	\$ 440.00	\$ (824.30)

Rent for the last period of October completed as a daily rate

$\$800 \times 12 \text{ months} = \$9,600.00$

$\$9,600.00 \text{ divided by } 365 \text{ days} = \26.30

$\$26.30 \times 11 \text{ days} = \289.30

18. Non-payment of rent is a violation of the rental agreement.
19. Payment for October has been calculated for a daily rate of \$26.30.
20. The Tenant had said that she didn't think that she owed that much and thought that she owed \$400.00 less. The tenant said that due to her medical issues she was unable to go through her banking information. She said she would need help to relay that information. In light of this, she was given the opportunity to send in that information before end of business on 26-October-2021. This information was not provided to this board by the deadline.
21. The ledger indicates the Tenant owes \$824.30 to the Landlord.

Decision

22. The landlords claim for rent succeeds in the amount of \$824.30.
23. The tenant will pay a daily rate of rent; \$26.30 for the days following the hearing.

Issue 2: Vacant Possession of the Rental Premises

Landlord's Position

24. The Landlord submitted two separate Termination Notices to this Tribunal: Landlord's Notice to Terminate Early – Cause; rent not paid ([REDACTED] #05) and the Landlord's Notice to Terminate Standard [REDACTED] #06).
25. The Authorized Representative said that the Landlord sent both Termination Notices on the same day because if the Tenant paid her rent in full, they still wanted an active Termination Notice.

26. The Authorized Representative said that she went to give the tenant the notice in person and she wasn't there, so she placed it in the mailbox. She then sent the notices to her email. The email address has been used by the Landlord and Tenant to relay information. The Tenant also uses this email for sending rent payments.
27. The Authorized Representative has spoken to the Tenant about her notice and the Tenant had told her she was looking for an apartment.
28. The Notice to Terminate Early – Cause (█#05) is for late payments. As established in the Rent Ledger in Paragraph 17 a portion of the Tenant's rent has been late ever since March 16, 2021. This Notice is dated for August 4, 2021 with a termination date of August 15, 2021.
29. The Notice to Terminate Standard (█#06) is dated for August 4, 2021 with a termination date of November 14, 2021.

Tenant's Position

30. The Tenant said the first time she received something official was when she received the hearing package from the Authorized Representative a week and a half ago.
31. The Tenant did not consider the forms given to her to be official because the blanks were filled in with handwriting.
32. The Tenant believes the reason she is being evicted is because the landlady is embarrassed by the police being called to the apartment. She has indicated that she was the victim of a violent crime, paragraph 14, and that it was not her fault she had to call the police.
33. The Tenant said she had a lot of anxiety about the type of locks she has on her apartment and she had approached the Landlord to request deadbolts be installed.
34. The Tenant has a service dog, who alerts her when she has a seizure; she is concerned that she will not be able to find an apartment because she believes that if someone doesn't want a dog in the apartment, they will give another reason to not accept her as a tenant. She believes they won't say it's because of the service dog because she thinks the landlords would know they couldn't use this as a reason.
35. The Tenant has been looking for an apartment. She had hoped to have more time to provide this board with a doctor's note to explain that it would be detrimental to her health if she is evicted.

Analysis

36. The Tenant revealed a number of life circumstances and health concerns that impact her ability to find and maintain housing. Although these issues have an impact on the Tenant, they are not the responsibility of the Landlord.
37. The Tenant also said that she didn't think the documents terminating her tenancy were official. The documents are on forms provided by this board, they were signed, explained the reason for the termination and were served appropriately.
38. The landlord submitted a rent ledger (paragraph 17) indicating that the Tenant had been in some degree of arrears since the middle of March 2021.
39. In Section 19 of the *Residential Tenancies Act; 2018*

Notice where failure to pay rent

19. (1) (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

40. When any tenant fails to pay rent, the landlord may choose to terminate that rental agreement under the above clause.
41. The Landlord's first Termination: Notice to Terminate Early – Cause (█ #05), follows all guidelines expected in the Act. The tenant is in arrears for almost 4 months and the Landlord provided 10 clear days' notice. This is a valid termination notice and the tenant should have moved out on August 15, 2021.
42. It is not necessary to evaluate the second Termination Notice (█ #06,) because the first one is valid.

Decision

43. The termination notice is valid and the Landlord's claim for vacant possession succeeds.
44. The tenant will vacate the property immediately.
45. The tenant will 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.

Summary of Decision

46. The Tenant will pay the Landlord \$824.30, for past due rent.
47. The Tenant will pay the Landlord \$26.30 for each day beginning 26-October-2021 until such time as the landlord is given vacant possession of the property.
48. The termination notice is valid and the Landlord's claim for vacant possession succeeds.
49. The Tenant will vacate the property immediately.
50. The Tenant will 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.

October 28, 2021
Date

