

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0326-05

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 1:47 p.m. on October 7, 2021.
2. The applicant, [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 telephone number provided to this board. 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 landlord submitted an affidavit [REDACTED] #01) with her application stating that she had served the tenant by registered mail on September 17, 2021, the tracking number ([REDACTED] #03) showed that the package was not picked up. The landlord went above and beyond and attempted to serve the tenant two additional times. Our policy is that 5 days after a notice is sent by registered mail, it is considered served. 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.

Issues before the Tribunal

5. The landlord is seeking:
 - Premises vacated
 - Hearing expenses reimbursed

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 the case is section 19 of the *Residential Tenancies Act 2018*: notice when failure to pay rent, section 34: requirement for notices, section 35: Service of documents.

Issue 1: Vacant Possession of the Rental Premises

Relevant Submissions

8. The landlord and tenant entered a written rental agreement (■#02) for a term from February 01, 2021 – August 01, 2021. The tenant took occupancy on February 1, 2021. The rent is \$750.00 per month due on the 1st day of each month. There was a security deposit paid, \$372.00 on Jan 20, 2021.
9. The landlord submitted two termination notices; one under section 24 for interference with peaceful enjoyment and the other under section 19 for failure to pay rent (■#05). She is pursuing a termination due to failure to pay rent.
10. The notice for failure to pay rent was signed on July 30, 2021, with an eviction date for August 10, 2021. The landlord served this to the tenant in person, she knocked on the door and the tenant did not wish to open the door, the tenant asked the landlord to place it in her mailbox.
11. The landlord said that this is typical behavior of the tenant and that she doesn't usually open the door to interact with the landlord.
12. The landlord submitted a rent ledger (■#04), which shows that the tenant's rent is for \$750.00 however in July and August she pays \$738.89 for each month leaving a balance for each month of \$11.11 totaling \$22.22. In September the rent comes in two half payments and there has been a payment for half of October.
13. The landlord is not requesting the rental arrears, she is only seeking vacant possession of the property

Analysis

14. The relevant subsections of s.19 of the Residential Tenancies Act, 2018 state:

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.

.....

15. Rent is due, in full, before midnight on the day it is due; in this case the 1st day of each month. Nonpayment of rent is a violation of the rental agreement.
16. At the time the landlord served notice to the tenant on July 30, 2021 (████#05), a portion of the rent had been in arrears since July 01, 2021, this is supported by the submitted rent ledger █████#02)
17. The landlord in a month to month lease can give notice when the rent is overdue for 5 days. The landlord can give notice for not less than 10 days after the notice is served on the tenant.
18. The landlord's claim meets the requirements of the *Act*.

Decision

19. The landlord's claim for an order for vacant possession of the rental premises succeeds.
20. The tenant should have vacated the property on August 10, 2021. The tenant is to vacate the property immediately.
21. 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

Issue 2: Reimbursement for cost of hearing

Relevant Submissions

22. The landlord submitted receipts (████#06) for the following expenses incurred while processing this claim:

• Filing fee	20.00
• Commissioner of oath fee	35.00
• Canada Post	13.44
• Canada Post	18.63
• Total.....	87.07

Decision

23. As the landlord's claim has been successful she may retain the total of these expenses \$87.07 from the tenant's security deposit.

Summary of Decision

24. The landlord is entitled to the following:

- An order for vacant possession of the rented premises
- The landlord may retain \$87.07 of the tenant's security deposit to reimburse for the cost of hearing expenses.
- 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.

October 18, 2021

Date

