

## Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0361-05

Jacqueline Williams  
Adjudicator

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### Introduction

1. Hearing was called at 1:40 p.m. on September 22, 2021, via teleconference.
2. The applicants, [REDACTED] hereinafter referred to as landlord1 and landlord2, attended by teleconference.
3. The respondents, [REDACTED] hereinafter referred to as “the tenants” did not attend.

### Preliminary Matters

4. The tenants were not present or represented at the hearing and I contacted them by telephone at the start of the hearing, they informed me that they were at an appointment and would not be attending. 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 they have been properly served. The landlords submitted an affidavit (AV#01) with their application stating that they had served the tenant with notice of the hearing, by email on August 27, 2021. The email was provided to the landlord by the tenant and has been used for correspondence. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.
5. The landlords amended their request for \$3,300.00 rent paid to be up to date. They added a payment on April 5, 2021 of \$500.00 that they had missed, rent for September \$1000.00 and a payment in August of \$200.00. For a total of \$3,600.00.

## Issues before the Tribunal

6. The landlords are seeking
  - Rent Paid \$3,600.00
  - Premises Vacated
  - Hearing expenses reimbursed \$20.00

## Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
8. 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 Paid \$3,600.00

### Relevant Submissions

9. The landlords entered into a rental agreement with the tenants on January 11, 2021 for a one year term from February 01, 2021 - January 31, 2022. The tenants took possession on January 15, 2021 with an agreement that no rent charged would be charged for the first two weeks. The monthly rent was for \$1,000.00 due on the 1<sup>st</sup> of each month. There was a \$500.00 security deposit paid on January 11, 2021. The landlords are still in possession of the security deposit. They submitted the rental agreement (█#05) as evidence.
10. The security deposit was paid in cash. Rent payments were completed through electronic transfer.
11. While discussing the case Landlord2 noticed a payment that was not included in the total. This amendment was made to the total and reflected in paragraph 5, as well as, the below table.
12. The landlords submitted a rent ledger (█#01) with their evidence. The amounts in the ledger have been reentered in the table below:

Rent Ledger

█

Date	Action	Amount	total
19-Jan-21	Rent paid	500	500
29-Jan-21	Rent paid	500	1000
1-Feb-21	Rent due	-1000	0
20-Feb-21	Rent paid	500	500
1-Mar-21	Rent due	-1000	-500
16-Mar-21	rent paid	250	-250
19-Mar-21	rent paid	250	0
1-Apr-21	Rent due	-1000	-1000

5-Apr-21		Rent paid	500	-500
28-Apr-21		Rent paid	250	-250
1-May-21	Rent due		-1000	-1250
1-May-21		Rent paid	250	-1000
27-May-21		Rent paid	500	-500
1-Jun-21	Rent due		-1000	-1500
8-Jun-21		Rent paid	500	-1000
1-Jul-21	Rent due		-1000	-2000
1-Aug-21	Rent due		-1000	-3000
4-Aug-21		Rent paid	200	-2800
18-Aug-21		Rent paid	200	-2600
1-Sep-21	**Rent due daily rate @ 32.88 * 22 days		-723.36	-3323.36

\*\* \$1000.00 x 12 months = \$12,000.00 per year; \$12,000.00 / 365 days = \$32.88 a day;  
\$32.88 x 22 days = \$723.36

- The rate for September was amended from a monthly rate to a daily rate as there is a termination notice served to the tenants.

### Analysis

- Nonpayment of rent is a breach of the rental agreement. Rent is to be paid in full before midnight on the day it is due.
- The table shows that the tenants are in rental arrears after the April rent comes due. They remain in arrears as of the date of the hearing.
- The tenants owe the landlords \$3,323.36.

### Decision

- The landlords' claim for rent succeeds in the amount of \$3,323.36.

### Issue 2: Vacant Possession of the Rental Premises

#### Relevant Submissions

- The landlords submitted the notice to terminate early under section 19 of the Act for non-payment of rent (██████03) to the board.
- The termination notice is signed on July 19, 2021 by both landlords, it has an eviction date of July 31, 2021. Landlord2 said she scanned it and sent it via email to the tenants, at the email they provided, on July 19, 2021. The tenants responded to the email.
- The tenants attempted to make a verbal agreement to pay \$200.00 every Tuesday until the debt was paid in full. Landlord1 said that they had made promises of payment in the past and did not follow through. After the notice was served they still did not make the payments as promised.

## Analysis

21. 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),

(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.

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22. Section 19 says that when the rent is overdue by 5 days a landlord can give a notice of termination for not less than 10 clear days. The rent in this case is overdue since April 2, 2021. The termination notice adheres to the timelines outlined in the *Act*.

23. The termination notice is valid and the tenants should have vacated on July 31, 2021.

## Decision

24. The landlords' claim for an order for vacant possession of the rented premises succeeds.

25. The tenants shall pay to the landlords the cost charged to the landlord by the Office of the High Sheriff, should the landlords be required to have the Sheriff enforce the attached order of Possession.

## Issue 3: Hearing Expenses

### Decision

26. The landlords' incurred the cost of filing for the hearing expenses and provided a receipt for the \$20.00 (■■■■ #04). Pursuant to policy 12.01, as the landlords' application is successful, the tenant is responsible for this cost.

## Summary of Decision

27. The landlord is entitled to the following:

- Rent owing \$3,323.36 as well as hearing expenses \$20.00 for a total of \$3,343.36.
- A payment of a daily rate of rent beginning September 23, 2021 and continuing until the landlord regains possession of the property; in the amount of \$32.88 per day.
- An order for vacant possession of the rented premises
- The tenants 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.

September 27, 2021

Date

