

## Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0435-05

Jacqueline Williams  
Adjudicator

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### Introduction

1. Hearing was called at 1:44 p.m. on 17-November- 2021.
2. The applicant, [REDACTED] hereinafter referred to as “the landlord” attended by teleconference.
3. The respondents, [REDACTED] hereinafter referred to as “tenant1 and tenant2.” Tenant1 did attend by teleconference and tenant2 did not attend the hearing.

### Preliminary Matters

4. Tenant2 was not present or represented at the hearing and I was unable to reach her 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 she has been properly served. The landlord submitted an affidavit (LL#01) with his application stating that he had served both tenants with notice of the hearing by email and text on 05-November-2021, as well as, by delivering it by hand on 06-November-2021. Tenant1 confirmed this service and as both tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.
5. The landlord amended his application from \$800.00 rent owing, to reflect the current rent owed, \$2,400.00.

## Issues before the Tribunal

6. The landlord is seeking:
- Rent paid \$2,400.00
  - Security deposit applied against monies owed \$400.00
  - Vacant possession of the property

## 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 19: Notice where failure to pay rent, Section 14: Security deposit and Section 34: Requirements for notices.

## Issue 1: Rent Paid \$2,400.00

### Landlord's Position

9. The landlord said that he had entered into a rental agreement with the tenants in June 2021. The rental agreement (LL#02) was for a monthly term from the 1<sup>st</sup> day of the month to the last. \$800.00 rent is due the first day of each month. The tenancy began on 01-July-2021 and the tenants took occupancy on 12-July-2021. The tenants paid a \$400.00 security deposit on 28-June-2021. The landlord still has the security deposit.
10. The landlord submitted a rent ledger (LL#03) indicating that the tenants had fallen into rental arrears beginning August 2021. On 10-August-2021 the rent is up to date. After the 01-September-2021 rent is due, no more rent is paid. See below:

Rent ledger [REDACTED]

Date	Action	Amount	total
1-Jul-21	Rent due	\$ (800.00)	\$ (800.00)
7-Jul-21	Rent paid	\$ 800.00	\$ -
1-Aug-21	rent due	\$ (800.00)	\$ (800.00)
6-Aug-21	Rent paid	\$ 400.00	\$ (400.00)
10-Aug-21	Rent paid	\$ 400.00	\$ -
1-Sep-21	rent due	\$ (800.00)	\$ (800.00)
1-Oct-21	rent due	\$ (800.00)	\$ (1,600.00)
1-Nov-21	rent Nov 01 - 17 (hearing date)	\$ (447.10)	\$ (2,047.10)

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

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

$\$26.30 \times 17 \text{ days} = \$447.10$

11. The landlord has given the tenants a termination notice, therefore a daily rental rate was calculated for the above table.
12. The landlord confirmed that tenant2 did contact him this summer to let him know that rent would be late. She did not make arrangements for a change in the date the payment would be due going forward.

#### Tenant1's Position

13. Tenant1 agreed to the details of the rental agreement.
14. Tenant1 said he was aware that the rent was in arrears. He had believed that tenant2 had made arrangements for the rent to come out around the 6<sup>th</sup> of the month, to coincide with his pay cheque.
15. Tenant1 is apologetic for the inconvenience that this has caused the landlord.

#### **Analysis**

16. Non-payment of rent is a violation of the rental agreement (LL#02) signed by the landlord and tenants. Tenant1 acknowledges that he owes this rent to the landlord.

#### **Decision**

17. The tenants shall pay the landlord \$2,047.10 for rent.

#### **Issue 2: Security deposit applied to monies owed \$400.00**

##### Landlord's position

18. The landlord stated that he has not completed a condition report as the tenants are still occupying the apartment. He knows that there is currently a screen damaged.
19. The landlord is requesting to retain the security deposit against the current money owed.

##### Tenant1's position

20. Tenant1 acknowledges that he was locked out of the apartment and did break a screen and the door knob. He stated that he will fix these issues before moving. (The landlord agreed to the door knob being changed).

## Analysis

21. As per section 14.10 of the *Residential Tenancies Act, 2018*:

14. (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.

22. As the landlord's claim for rent has been successful, he shall retain the entire security deposit of \$400.00 towards the rent that is owing.

## Decision

23. The landlords request to retain the security deposit of \$400.00 against rent owing succeeds.

## Issue 3: Vacant possession of the property

### Landlord's Position

24. The landlord submitted a Termination Notice – Cause for rent not paid. (LL#04). It is dated for 17-September-2021 with a termination date of 28-September-2021.

25. The landlord said he delivered it by hand as well as sent an email and text copy to both tenants on 17-September-2021.

### Tenant1's Position

26. Tenant1 agrees to the service of documents.

27. Tenant1 is currently looking for new housing. He wishes things could have worked out differently.

## Analysis

28. As per section 19 of the Residential Act; 2018:

### **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.

- 29. The rent was overdue after 02-September-2021 and therefore is more than the required 5 days late. The landlord and tenant<sup>1</sup> both agree to the service of the notice, which meet the requirements of the *Act*.
- 30. The notice is valid and the tenants should have moved on 28-September-2021.

### Decision

- 31. The landlords claim for vacant possession succeeds, the tenant shall move immediately.
- 32. The tenant will pay the daily rent amount (paragraph 10) of \$26.30, beginning 18-November-2021 until such time as the landlord regains possession of the property.
- 33. 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.

### Summary of Decision

- 34. The landlord is entitled to:
  - Rent owing \$2,047.10, less the security deposit of \$400.00, totaling \$1,647.10.
  - A payment of a daily rate of rent, in the amount of \$26.30 per day beginning 18-November-2021 and continuing to the date the landlord obtains possession of the rental unit.
  - An order for vacant possession of the rented premises.
  - 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.

November 25, 2021  
Date

