

## Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0553-05

Jacqueline Williams  
Adjudicator

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### Introduction

1. Hearing was called at 11:15 p.m. on 08-December-2021.
2. The applicant, [REDACTED] represented by, [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 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 the application stating that she had served the tenant with notice of the hearing, electronically to the email she was provided by the tenant and they have used this email to communicate. The notice was given on 26-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 her absence.
5. The landlord amended her application to reflect rent due in December that has not been paid. The rent total has changed from \$2,392.00 to \$2,990.00.

### Issues before the Tribunal

6. The landlord is seeking
  - Rent \$2,990.00
  - Security deposit applied to monies owed \$300.00
  - Premises vacated
  - Hearing expenses reimbursed \$20.00

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

## **Issue 1: Rent \$2,990.00**

### Relevant Submissions

9. The landlord submitted the rental agreement (LL#02). She testified that they entered into a written rental agreement with the tenant on 08-December-2020. The tenant took occupancy of the unit on that date. The agreement is monthly, from the first of the month to the last day of each month. Rent is set at \$598.00 that is to be paid on the 1<sup>st</sup> day of the month and includes heat and light. The tenant paid a security deposit of \$300.00 and the landlord is still in possession of the deposit.
10. The landlord submitted a rent ledger (LL#03) which shows that the rent was paid in full up to the end of July 2021. There has not been any payment made for rent from 01-August-2021 to present. 5 months' rent x \$598.00 = \$2,990.00.
11. The landlord said that prior to August 2021, the tenant's rent was paid in full by the  
[REDACTED]

### **Analysis**

12. Non-payment of rent is a violation of the rental agreement.
13. I accept the rent ledger submitted by the landlord and find that the tenant owes 5 months' rent totaling \$2,990.00.

### **Decision**

14. The landlord's claim for \$2,990.00 in rent succeeds.

## **Issue 2: Security deposit applied against monies owed \$300.00**

### Relevant Submissions

15. The landlord stated that the tenant paid a \$300.00 security deposit when she took possession of the unit, as indicated in paragraph 9.
16. The landlord is requesting that the security deposit be applied to monies owed.

### **Analysis**

17. The landlords' claim for rent owed has been successful (paragraph 14) and they shall retain the security deposit as per section 14 of the *Residential Tenancies Act, 2018*, below:
  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

### **Decision**

18. The landlord's claim to retain the security deposit of \$300.00 against rent owed succeeds.

## **Issue 3: Vacant Possession of the Rental Premises**

### Relevant Submissions

19. The landlord submitted a landlord's notice to terminate early – cause (LL#04), for non-payment of rent.
20. The notice is dated for 26-October-2021 with a termination date of 05-November-2021. Included with the submission is a time stamped picture of the notice posted on the tenant's door. The time stamp shows 26-October-2021 at 1:48 p.m.
21. The landlord said that she personally delivered the notice and affixed it to the tenant's door.

## **Analysis**

22. 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),

.....

- (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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23. The termination notice on a monthly rental must allow for a minimum of 10 clear days' notice. The termination notice given to the tenant (LL#04) does not give the minimum 10 clear days, it does not meet the standard of the *Act* and therefore is not a valid notice.

## **Decision**

24. The landlord's claim for vacant possession fails as the notice is not valid.

### **Issue 4: Hearing Expenses \$20.00**

25. The landlord's claim for past due rent 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 with the landlord's submissions (LL#05).

## **Summary of Decision**

26. The landlord is entitled to the following:

- Rent..... \$2,990.00
- Hearing expenses..... 20.00
- Less security deposit... (300.00)
- Total..... \$2,710.00

The tenant shall pay the landlord \$2,710.00 for rent and hearing expenses.

The landlord shall retain the security deposit of \$300.00 for rent owed.

The termination notice dated 26-October-2021 with a termination date of 05-November-2021 is not a valid notice.

December 14, 2021

Date

