

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0594-05

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 2:12 p.m. on 17-January-2022.
2. The applicant, [REDACTED] hereinafter referred to as “the landlord” attended by teleconference.
3. The respondents, [REDACTED] hereinafter referred to as “tenant1 and tenant2” did not attend.
4. The landlord brought forward a witness, [REDACTED] hereinafter referred to as “the witness.”

Preliminary Matters

5. The tenants were not present or represented at the hearing; I reached tenant1 by telephone at the start of the hearing and she said that neither of them would be available to attend 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 they have been properly served. The landlord submitted affidavits (LL#01) with her application stating that she had served the tenants with notice of the hearing, by emailing the package to tenant1 on 05-January-2022 and sending the package by text to both tenants on 06-January-2022. She provided proof of the email (LL#02) and proof of the texts (LL#03) with her package. 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.
6. The landlord amended her application for rent owing from \$3,600.00 to \$3,000.00 to reflect payments made, against the debt, by the tenants.

Issues before the Tribunal

7. The landlord is seeking:

- Rent \$3,000.00
- Late fees \$75.00
- Security deposit applied against monies owed \$1,250.00
- Premises vacated
- Hearing expenses \$20.00

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.

9. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 10: Statutory Conditions, Section 14: Security deposit, Section 15: Fee for failure to pay rent, Section 19: Notice where failure to pay rent, Section 24: Notice where tenant contravenes peaceful enjoyment and reasonable privacy, as well as, Residential Tenancies policies 7 and 12.

Issue 1: Rent \$3,000.00

Relevant Submissions

10. The landlord submitted the rental agreement (LL#04) that she has with the tenants. The tenants moved in on 31-October-2021. Their agreement begins on 01-November-2021 and is for a year term ending 31-October-2022. The rental period is from the 1st day of the month to the last. Rent is \$1,800.00 and is due on the 1st day of each month. The tenants paid a security deposit of \$1,250.00 on 27-October-2021; the landlord is still in possession of this deposit.

11. The landlord submitted a rent ledger (LL#05) that she updated to the day of the hearing, see table below:

Rent ledger				
Date		Action	Amount	total
1-Nov-21	rent due		1,800.00	1800.00
27-Oct-21		rent paid	-1,800.00	0.00
1-Dec-21	rent due		1,800.00	1800.00
12-Dec-21		rent paid	-500.00	1300.00
20-Dec-21		rent paid	-100.00	1200.00
1-Jan-22	rent due 01-17 Jan		1,006.06	2206.06

Daily rate
\$1,800 x 12 months = \$21,600.00 a year
\$21,600.00 divided by 365 days = \$59.18 a day
\$59.18 x 17 days in January = \$1,006.06

12. The landlord made amendments to the ledger to update the amount owed by crediting the payments made by the tenants in December.

Analysis

13. Non-payment of rent is a violation of the rental agreement. I accept the landlord's testimony and submitted evidence as proof of rent arrears. The rent for January has been amended to reflect a daily rate up to and including the date of the hearing.
14. The landlord's claim for rent succeeds in the amount of \$2,206.06.

Decision

15. The tenants shall pay the landlord \$2,206.06 for rent.

Issue 2: Late fees \$75.00

Relevant Submissions

16. The landlord included the late fees in the original ledger. She had entered into the ledger \$5.00 for 02-December-2021 and \$2.00 for each following day.
17. She is requesting the maximum amount of late fees of \$75.00.

Analysis

18. As shown in the rent ledger table in paragraph 11, the tenants are in rent arrears as of 02-December-2021.
19. On 02-December the landlord charges \$5.00 for the first day the rent is late. On 03-December-2021 to the date of the hearing the rent continues to be late and is calculated as 46 days x \$2.00 = \$92.00. \$92.00 + 5.00(first day) = \$97.00.
20. Section 15 of the *Residential Tenancies Act, 2018* states:

Fee for failure to pay rent

15. (1) Where a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister.

The minister has prescribed the following:

Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed:

- (a) *\$5.00 for the first day the rent is in arrears, and*
- (b) *\$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00.*

21. As the tenants have been arrears since 02-December-2021, the landlord is entitled to a payment of the maximum fee of \$75.00 as set by the minister.

Decision

22. The landlord's claim for late fees succeeds in the amount of \$75.00.

Issue 3: Security deposit applied to monies owed \$1,250.00

Relevant Submissions

23. The landlord stated in paragraph 10 that as per the rental agreement (LL#04) the tenants paid \$1,250.00 security deposit on 27-October-2021, she is requesting to retain this deposit towards monies owed.

Analysis

24. The landlord obtained a security deposit from the tenants on 27-October-2021
25. The landlord made a request to the director to retain the security deposit, as show below in Section 14 of the *Residential Tenancies Act, 2018*:

Security deposit

(8) A security deposit is not an asset of the landlord but is held by the landlord in trust and may be used, retained or disbursed only as provided in this section.

(9) Not later than 10 days after the tenant vacates the residential premises, the landlord shall return the security deposit to the tenant unless the landlord has a claim for all or part of the security deposit.

(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.

26. It has been determined that the landlord has suffered loss of rent and may therefore retain the security deposit towards the loss of that rent.

Decision

27. The landlord's application to retain the security deposit \$1,250.00 against monies owed succeeds.

Issue 4: Premises vacated

Relevant Submissions

28. The landlord has submitted two separate termination notices for this file.

Notice 1

29. Termination notice 1 (LL#06) accompanied by the landlord's signature (LL#07) is on a "landlord's notice to terminate early, cause" form for failure to pay rent. It is dated for 10-December-2021 with a termination date of 21-December-2021.
30. The landlord stated that she served this notice by both email and text, to the contact information provided to her by the tenants, on 10-December-2021 in the afternoon.

Notice 2

31. The landlord submitted that she also served another termination notice (LL#08) it was also accompanied by her digital signature (LL#09): the notice is on the "landlord's notice to terminate early – cause" form for interference with peaceful enjoyment and reasonable privacy.
32. The notice is dated for 20-December-2021 with a termination date of 26-December-2021. She served this by both email and text to the tenants on 20-December-2021 in the afternoon.
33. The landlord said that the tenants live in a two apartment home; they live in the upstairs two story house and her witness lives in the basement apartment.
34. The landlord stated that shortly after the tenants moved in she started receiving complaints from the downstairs apartment about the upstairs tenants.
35. On 11-November-2021 she received a text from the witness saying that there was a lot of noise coming from the upstairs apartment.
36. The witness then confirmed that he and his partner did hear a lot of noise and commotion from the upstairs on 11-November-2021. He said that the next day tenant2 approached him and apologized for the noise. The witness said that tenant2 told him that they had a friend over who became intoxicated and created a lot of noise.

37. The landlord submitted the texting thread (LL#11) between herself and the witness. She draws our attention to the 08-December-2021 post where the witness is a lot of activity in the upstairs apartment and that he feels uneasy. At that time he said he is noticing that someone is wiggling the door knob as if they are trying to enter his apartment.
38. The witness said that they were really quiet when the noise was happening because they were uneasy and didn't want to draw attention to that they were home. Tenant2 later tells him that someone threw a brick through their window. The witness went up to the front of the house and looked in through the broken window and sure enough, there was a brick thrown in.
39. The landlord said she was told by the tenants that there was a rock thrown through their window. She said that she was informed by the police that it was a brick and that this could be sent as a threat and that the police would be increasing patrols in the area. The landlord submitted for the cost of replacing the window (LL#11).
40. The landlord received another text (LL#10) from the witness on 09-December-2021 saying that again there is shouting and yelling from upstairs. He said that, he and his partner are feeling nervous and may go and stay with his mother.
41. The witness said that the occasions with noise and yelling is ongoing and that the occurrences are linked together in his memories. He said sometimes it sounds like they're killing each other and it makes him very uneasy. He said that they considered going to his mother's on a few occasions but she has cats and so does he (the cats don't get along) so this isn't an easy answer. They didn't go to his mother's on this night.
42. The landlord received further texts and complaints on 12-December-2021 and 19-December-2021, reporting the same type of noise and yelling from upstairs.
43. The witness reports that on 20-December-2021, it someone tried to kick in the front door of his apartment, he thought it was two people and that they were younger. At the time he had company over and the friend assisted him in pushing the couch up against the door, then he or his partner called the police (he was unable to remember specifically who called the police in the confusion). He believes that the people who were trying to get into his apartment thought that they were kicking in the door of the other tenants.
44. The police responded and an occurrence summary is attached (LL#12) that shows the file numbers for the property.
45. The landlord had a camera installed to record what was happening on her property. The installer gave the camera information to the upstairs tenants.
46. The witness contacted the landlord on 04-January-2021 to say that there were holes in the glass of the door to his porch. The landlord said when she went over to check out the damage to the window she thought it looked like bullet holes. They called the police.
47. The police attended the house and found 22 caliber bullets. This is also included on the occurrence summary attached (LL#12).

48. After the police left, while the witness was taping up the holes, tenant2 came down and spoke with him. The witness said that the tenant told him they also had bullet holes in their bathroom.
49. The witness discussed this with the landlord and she followed up with the police. The police told her that the upstairs tenants didn't tell them about the bullets in their part of the house. The police requested the video footage from the tenants and it was provided, however according to the landlord, the tenants refused to provide the police with the password to open the video. The landlord said that the police had asked her for the password and she told them that the tenants also would not provide her with that information, they told her that videoing their property was a violation of their right to privacy. She also said that the police told her that the camera has been turned in towards the house by someone and probably wouldn't pick up any yard activity.
50. The witness and his partner have left the house. Their belongings are still there. They will be moving into another place on 01-February-2022. They are nervous to return to the apartment to retrieve their belongings.

Analysis

Notice 1

51. The initial termination notice is for failure to pay rent. It was served on 10-December-2021, as per the paragraph 18 the tenants are in rent arrears beginning 02-December-2021 and remain in arrears as of the date of the hearing.
52. Section 19 of the *Residential Tenancies Act, 2018*, says:

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.

.....

53. The landlord, according to Section 19 is able to serve the tenants with notice after the rent is 5 days late. The notice served by the landlord on the tenants meets the requirements of the Act and is a valid notice.

Notice 2

54. The statements and text messages between the landlord and the witness show an escalation of dangerous activity, which has resulted in the witness and his partner having to flee from their home and live with someone else, while trying to find a new place to stay. They are so concerned about the upstairs violence, and the possibility of becoming ensnarled in the upstairs tenants' issues, that they fear going to the apartment to retrieve their belongings.

55. The fear of the witness and his partner is reasonable, as they have been subjected to violent behavior upstairs, for example: someone attempting to open the adjoining door to their apartment, someone trying to kick in their front door and someone firing bullets into their front porch.

56. Section 10 of the Residential Tenancies Act, 2018, states:

Statutory conditions

10. (1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:

...

7. Peaceful Enjoyment and Reasonable Privacy -

The tenant shall not unreasonably interfere with the rights and reasonable privacy of a landlord or other tenants in the residential premises, a common area or the property of which they form a part.

....

57. According to Residential Tenancies Policy 7-05 Peaceful Enjoyment, interference of peaceful enjoyment is defined as: "an ongoing disturbance or activity, outside of normal everyday living, caused by the landlord or the tenant". Peaceful enjoyment may include, but is not limited to the following: (i) excessive noise; (ii) aggressive or obnoxious behaviour; or (iii) threats and harassment.

58. It is reasonable to see the dangerous environment that the witness and his partner have been subject to, is in violation of their peaceful enjoyment of their home.

59. Section 24, of the *Residential Tenancies Act, 2018*, states:

Notice where tenant contravenes peaceful enjoyment and reasonable privacy

24. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes statutory condition 7(a) set out in subsection 10(1), the landlord may give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises on a specified date not less than 5 days after the notice has been served.

(2) In addition to the requirements under section 34, a notice under this section shall

- (a) be signed by the landlord;
- (b) state the date on which the rental agreement terminates and the tenant is required to vacate the residential premises; and
- (c) be served in accordance with section 35.

60. The termination agreement as described in paragraphs 31 and 32, meets the standard of the *Act*. This termination notice is also valid.

61. The tenants have been served two valid termination notices and should have vacated the premises.

Decision

62. The landlord's claim for an Order of Vacant Possession succeeds.

63. The tenants shall vacate the premises immediately.

64. The tenants 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

65. As per the table in paragraph 11, the tenants shall pay a daily rate of rent \$59.18 (each day) beginning 18-January-2022 until such time as the landlord regains possession of her property.

Issue 5: Hearing Expenses \$20.00

66. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#13) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

Summary of Decision

67. The tenant shall pay the landlord \$1,051.06, for the following:

• Rent	\$2,206.06
• Late fees.....	75.00
• Hearing expenses.....	20.00
• Less security deposit..	<u>(1,250.00)</u>
• Total	<u>\$1,051.06</u>

The tenant shall also:

- Vacate the premises immediately
- 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.
- Pay to the landlord a daily rate of rent, \$59.18 beginning 18-January-2022 until such time as the landlord regains possession of her property.

The landlord is entitled to:

- An Order of Vacant Possession,
- the above payments outlined in the decision, as well as,
- retain the security deposit of \$1,250.00 against monies owed.

January 24, 2022

Date

