

## Residential Tenancies Tribunal

Application 2022 No. 127NL

Decision 22-0127-00

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 2:02 PM on 28 April 2022 via teleconference.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as "landlord1" and "landlord2", participated in the hearing. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as "the tenants", did not participate.

### Issues before the Tribunal

3. The landlords are seeking the following:
  - An order for a payment of rent in the amount of \$1200.00, and
  - An order for vacant possession of the rented premises,

### Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this case is section 19 of the *Residential Tenancies Act, 2018* and rule 29 of *The Rules of the Supreme Court, 1986*.

### Preliminary Matters

6. The tenants were not present or represented at the hearing and I was unable to reach them by telephone. 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 respondents fail to attend the hearing,

Rule 29.11(1) states that the hearing may proceed in the respondents' absence so long as they have been properly served. The landlords submitted an affidavit with their application stating that the tenants were served with the application, by registered mail, on 17 March 2022, and the associated tracking history shows that the tenants never did collect the application and it was eventually returned to the landlords. Although the application was not collected by the tenants, section 42 of the *Residential Tenancies Act, 2018* states that where an application is sent by registered mail, it is considered to have been served on the 5<sup>th</sup> day after mailing—in this case, 22 March 2022. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlords, I proceeded with the hearing in their absence.

7. Landlord1 amended the application at the hearing and stated that they were now seeking a total of \$2800.00 in rent.

### **Issue 1: Rent - \$2800.00**

#### **Relevant Submissions**

8. Landlord1 stated that she had entered into a rental agreement with the tenants on 19 September 2019. The agreed rent was set at \$800.00 per month and landlord1 stated that the tenants had paid a security deposit of \$500.00 on 15 September 2019.
9. The landlords submitted rent records with their application (■■■ #4) showing the payments they had received from the tenants since they moved into the unit. These records show that although the tenants fell behind with their rent in September 2021, at the end of December 2021 they were able to get their balance back down to zero.
10. Since then, however, the landlords have only received 1 payment of \$400.00 in January 2022. The landlords are seeking an order for a payment of the remaining \$400.00 that is owing for January 2022 as well as \$2400.00 for the months of February, March and April 2022.

#### **Analysis**

11. I accept landlord1's claim that the tenants have not paid rent as required, and I agree with her that the tenants owe \$2800.00 for the period ending 30 April 2022.
12. As the landlords are also seeking an order for vacant possession of the rented premises, I find that they are entitled to a payment of rent to the date of the hearing and a per diem thereafter.
13. I calculate the amount owing to be \$2736.40 (\$2000.00 for the period ending 31 March 2022 and \$736.40 for April 2022 (\$800.00 per month x 12 months = \$9600.00 per year ÷ 365 days = \$26.30 per day x 28 days)).

## Decision

14. The landlords' claim for a payment of rent succeeds in the amount of \$2736.40.
15. The tenants shall pay a daily rate of rent in the amount of \$26.30, beginning 29 April 2022, and continuing to the date the landlords obtain vacant possession of the rented premises.

## Issue 2: Vacant Possession of Rented Premises

### Relevant Submissions

16. With their application, the landlords submitted copies of 3 termination notices that they had issued to their tenants in the month of February 2022. The most recent of those notices (■■■ #3) was sent to the tenants, by registered mail, on 28 February 2022, and the associated tracking history shows that it was not collected by the tenants and it was eventually returned to the landlords.
17. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 11 January 2022.
18. The landlords stated that the tenants have not moved out, as required, and they are seeking an order for vacant possession of the rented premises

### Analysis

19. 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.*

*(2) Notwithstanding subsection (1), where the tenant pays the full amount of the overdue rent, including a fee under section 15, before the*

*date specified in the notice under paragraph (1)(a) or (b), the rental agreement is not terminated and the tenant is not required to vacate the residential premises.*

20. As with the service requirements for an application, section 35 of the *Act* states that where a termination notice is sent to tenants by registered mail, it is also considered to have been served on the 5<sup>th</sup> day after mailing—05 March 2022.
21. On 05 March 2022, the day the notice was served, the tenants were in arrears in the amount of \$2000.00 and had been in arrears since the beginning of January 2022. No payments have been made since the termination notice was issued.
22. As the notice meets all the requirements set out in this section of the *Act*, and as it was properly served, it is valid.

### **Decision**

23. The landlords' claim for an order for vacant possession of the rented premises succeeds.
24. The tenants shall pay to the landlords any costs charged to the landlords by the Office of the High Sheriff should the landlords be required to have the Sheriff enforce the attached Order of Possession.

### **Issue 3: Security Deposit**

25. Landlord1 stated that the tenants had paid a security deposit of \$500.00 on 15 September 2019. As the landlords' claim has been successful, they shall retain that deposit as outlined in this decision and attached order.

### **Summary of Decision**

26. The landlords are entitled to the following:
  - A payment of \$2236.40, determined as follows:

a) Rent Owing .....	\$2736.40
b) LESS: Security Deposit.....	(\$500.00)
c) Total.....	<u>\$2236.40</u>
  - An order for vacant possession of the rented premises,
  - A payment of a daily rate of rent in the amount of \$26.30, beginning 29 April 2022 and continuing to the date the landlord obtains possession of the rental unit,

- The tenants shall also pay to the landlords 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.

04 May 2022

Date

  
John R. Cook  
Residential Tenancies Tribunal