

Residential Tenancies Tribunal

Application [REDACTED]

Decision 20-0037-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:15 pm on 31 March 2021 via teleconference.
2. The applicant, [REDACTED] was represented at the hearing by [REDACTED] [REDACTED] hereinafter referred to as "the landlord". The respondent, [REDACTED] hereinafter referred to as "the tenant", did not participate.

Issues before the Tribunal

3. The landlord is seeking the following:
 - a. An order for a payment of rent in the amount of \$1179.84;
 - b. An order for a payment of late fees in the amount of \$75.00; and
 - c. 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 are sections 15 and 19 of the *Residential Tenancies Act, 2018* and rule 29 of the Rules of the Supreme Court, 1986.

Preliminary Matters

6. The tenant was not present or represented at the hearing and I was unable to reach her 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 a 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 with her application stating that she had served the tenant with notice of the hearing, by registered mail, and the associated tracking history shows that that letter was signed for by the tenant on 09 March 2021. She has had 21 days to provide a response. 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.

7. The landlord amended his application at the hearing and he stated that he was no longer seeking an order for possession of the property as the tenant vacated in January 2021. He also stated that he was now only seeking \$741.84 in rental arrears.

Issue 1: Rent - \$741.84

Relevant Submissions

8. The landlord stated that he had entered into a rental agreement with the tenant on 01 February 2018. The rent at that time was set at \$800.00 and by January 2021 it had increased to \$830.00. A portion of that rent was paid on the tenant's behalf by [REDACTED]. The landlord also stated that the tenant had paid a security deposit of \$300.00 on 24 January 2018.
9. The landlord submitted rent records with his application ([REDACTED] #1) showing the payments he had received from the tenant since she moved into the unit. According to these records, the tenant had been in arrears since she moved into the unit and on 15 December 2020 he issued her a termination notice. A copy of that notice was submitted with his application ([REDACTED] #2). That notice was issued under section 19 of the *Residential Tenancies Act, 2018* (notice where failure to pay rent) and it had an effective termination date of 31 December 2020. The landlord stated that the tenant vacated sometime in January 2021.
10. The landlord's records show that in 2020 [REDACTED] had been paying \$427.00 each month to the landlord, on the tenant's behalf, and, for the most part, the tenant had been covering the remaining amount that had been owing each month. These records show, though, that the tenant had missed her portion of the rent payments in October and November 2020. She did make a payment of \$393.00 on 24 December 2020 and [REDACTED] made an additional payment on her behalf on 29 January 2021 in the amount of \$448.00.
11. According to the landlord's records, the tenant owes \$741.84 for the period ending 31 January 2021.

Analysis

12. I accept the landlord's testimony and evidence in this matter. I accept her record of the tenant's payments and I find that the tenant owes \$741.84 for the period ending 31 January 2021.

Decision

13. The landlord's claim for a payment of rent succeeds in the amount of \$741.84.

Issue 2: Late fees - \$75.00

Relevant Submissions

14. The landlord has assessed late fees in the amount of \$75.00.

Analysis

15. Section 15.1 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.

16. The minister has set the following fees:

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.

Decision

17. As the tenant has been in arrears since at least September 2020, the landlord is entitled to an award for the maximum fee of \$75.00 set by the minister.

Issue 3: Hearing Expenses

18. The landlord paid \$20.00 to file this application. As the landlord's claim has been successful, the tenants shall pay this hearing expense.

Issue 4: Security Deposit

19. The landlord stated that the tenant had paid a security deposit of \$300.00 on 24 January 2018. As the landlord's claim has been successful, he shall retain that deposit as outlined in this decision and attached order.

Summary of Decision

20. The landlord is entitled to the following:

- a) Rent Owing \$741.84
- b) Late Fees \$75.00
- c) Hearing Expenses \$20.00
- d) LESS: Security Deposit (\$300.00)
- e) Total Owing to Landlord \$536.84

19 July 2021

Date

