

## Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0060-01

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 9:15 AM on 21 February 2022 via teleconference.
2. The applicant, [REDACTED] was represented at the hearing by [REDACTED] [REDACTED], hereinafter referred to as "the landlord". The respondent, [REDACTED] [REDACTED], hereinafter referred to as "the tenant", did not participate.

### Issues before the Tribunal

3. The landlord is seeking the following:
  - An order for a payment of rent in the amount of \$607.26,
  - An order for a payment of late fees, and
  - An order for vacant possession of the rented premises.

### Preliminary Matters

4. The landlord amended her application at the hearing and stated that she was now seeking a total claim of rent in the amount of \$527.26.

### Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
6. Also relevant and considered in this case are sections 15 and 19 of the *Residential Tenancies Act, 2018*.

## **Issue 1: Rent - \$527.26**

### **Relevant Submissions**

7. The landlord stated that she had entered into a monthly rental agreement with the tenant on 08 March 2019. The agreed rent is set at \$650.00 and the landlord stated that the tenant had paid a total security deposit of \$472.00 when he moved into the unit.
8. With her application, the landlord submitted a copy of her rent records showing the payments the tenant had made since he moved into the unit (█ #1). According to these records, \$630.00 of the tenant's rent is being paid, monthly, by the █ and the tenant would periodically make additional payments to the landlord to cover the remaining balance. For example, the tenant paid \$60.00 on 03 February 2022, \$60.00 on 06 January 2022, and \$80.00 on 02 December 2022.
9. Despite these payments, the landlord testified that the tenant is currently in rental arrears in the amount of \$527.26 for the period ending 28 February 2022.

### **Analysis**

10. The landlord's records show that, in addition to rent, the tenant had also been charged \$90.79, on 26 January 2021, to replace mailbox keys, and on 29 September 2021, he was charged an additional \$588.23 for the costs of installing a fire safety door glass. But that total amount, \$679.02, is not rent and therefore cannot be included in the landlord's claim for rent owing.
11. When that amount is removed, these records show that the tenant actually has a rent credit of \$151.76cr. As such, the landlord's claim for a payment of rent does not succeed.

### **Decision**

12. The landlord's claim for a payment of rent does not succeed.

## **Issue 2: Vacant Possession of Rented Premises**

### **Relevant Submissions**

13. With her application, the landlord submitted a copy of a termination notice █ #2) which she stated was delivered to the tenant, by her resident manager, on 25 November 2021. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 06 December 2021.

14. The landlord stated that the tenant has not moved out of his unit, as required, and she is seeking an order for vacant possession of the rented premises.

## **Analysis**

15. 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.*

16. According to the landlord's rent records, on 25 November 2021, when the termination notice was issued, the tenant was in arrears in the amount of \$667.26.
17. However, as I have determined in the previous section, the landlord has included in her rent records an amount, totalling \$679.02, which has to be removed as it is not rent. That means that on 25 November 2021, the day the notice was issued, the tenant actually had a rent credit of \$11.76cr.
18. As the tenant was not in rental arrears when the termination notice was issued to him, that notice is not valid.

## **Decision**

19. The termination notice issued to the tenant on 25 November 2021 is not a valid notice.

20. The landlord's claim for an order for vacant possession of the rented premises does not succeed.

### **Summary of Decision**

21. The landlord's claim for an order for a payment of rent does not succeed.
22. The landlord's claim for an order for vacant possession of the rented premises does succeed.

22 February 2022

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Date

