

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0191-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:45 am on 29 June 2021 via teleconference.
2. The applicant, [REDACTED] [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:
 - a. An order for a payment of rent in the amount of \$1326.00;
 - 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) a respondent 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 with her application stating that the tenant had been served with notice of the hearing, by e-mail, on 12 May 2021 and she has had 47 days to provide a response. A copy of that e-mail was submitted with the landlord's application and she pointed out that that e-mail address was provided to her in the rental agreement. 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 her application at the hearing stated that the total rent owing as of the date of the hearing was \$1452.00.

Issue 1: Rent - \$1452.00

Relevant Submissions

8. The landlord stated that she had entered into a 1-year, fixed-term rental agreement with the tenant commencing 11 February 2021 and a copy of the executed lease was submitted with her application (████#1). The agreed rent was set at \$800.00 per month and the landlord stated that \$337.00 of that amount was paid on the tenant's behalf by ██████████
9. Although it is acknowledged in the lease that the tenant had paid a security deposit of \$400.00, the landlord stated that no deposit was actually received.
10. The landlord submitted rent records with her application (████#2) showing the payments she had received from the tenant since she moved in in February 2021. According to these records, █████ paid the tenant's pro-rated rent for February 2021 and they have also paid, each month, their portion of the \$337.00 between March and June 2021.
11. The landlord stated that, except for a payment of \$400.00 on 09 June 2021 and except for the payments she had received from █████ the tenant paid no rent to the landlord during her tenancy. She calculates that the tenant owes \$1452.00 for the period ending 30 June 2021.

Analysis

12. I accept the landlord's claim that the tenant had not paid her rent as required. As the landlord is also seeking an order for vacant possession of the rented premises, I find that she is entitled to a payment of rent to the date of the hearing and a per diem thereafter.
13. Based on her testimony and records, I calculate that the landlord is entitled to a payment of \$1414.70 (\$1389.00 owing for the period ending 31 May 2021 (\$463.00 owing for each of March, April and May 2021 (\$800.00 per month less the \$337.00 █████ payment)) and \$25.70 for June 2021 (\$800.00 per month x 12 months = \$9600.00 per year ÷ 365 days = \$26.30 per day x 29 days = \$762.70

less \$337.00 paid by [REDACTED] and less \$400.00 paid by the tenant on 09 June 2021)).

Decision

14. The landlord's claim for a payment of rent succeeds in the amount of \$1414.70.
15. The tenant shall pay a daily rate of rent in the amount of \$26.30, beginning 30 June 2021, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Late Fees - \$75.00

Analysis

16. 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.

17. As the tenant has been arrears since at March 2021, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 3: Vacant Possession of Rented Premises

Relevant Submissions

19. With her application, the landlord submitted a copy of a termination notice [REDACTED] #3) which she stated was delivered to the tenant on 23 April 2021.
20. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 04 May 2021.
21. The tenant has not vacated the rented premises as required and the landlord is seeking an order for vacant possession of the rented premises.

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.

(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.

23. On 23 April 2021, when the termination notice was issued, the tenant was in arrears in the amount of \$926.00 and had been in arrears since the beginning of March 2021. Those arrears were not paid off prior to 04 May 2021, and although the landlord had received \$337.00 from [REDACTED] the rent of \$800.00 was charged on 01 May 2021, increasing the balance owing to \$1389.00.

24. As the termination notice meets all the requirements set out in section 19 of the *Act*, it is a valid notice.

Decision

25. The landlord's claim for an order for vacant possession of the rented premises succeeds.

26. The tenant 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.

Summary of Decision

27. The landlord is entitled to the following:

- A payment of \$773.89, determined as follows:
 - a) Rent Owing\$1414.70
 - b) Late Fees\$75.00
 - c) Total.....\$1489.70
- An order for vacant possession of the rented premises,
- A payment of a daily rate of rent in the amount of \$26.30, beginning 30 June 2021 and continuing to the date the landlord obtains possession of the rental unit,
- The tenant shall also 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.

30 June 2021

Date

