

## Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0281-05

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 1:15 pm on 13 September 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:
  - An order for a payment of rent in the amount of \$640.00,
  - An order for a payment of late fees in the amount of \$75.00, 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 are sections 15 and 19 *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 no telephone number was available where he could be reached. 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 he has been properly served. The landlord submitted an affidavit with her application ([REDACTED] #04) stating that she had served the tenant with notice of the hearing by registered mail on 27 July 2021, and

the associated tracking history shows that it was delivered on 29 July 2021. 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 his absence.

7. The landlord amended her application at the hearing and stated that she was now seeking a total of \$1750.00 in rental arrears.

### **Issue 1: Rent Owing - \$1750.00**

#### **Relevant Submissions**

8. The landlord stated that she had entered into a monthly rental agreement with the tenant on 24 December 2007. The current rent is set at \$855.00 per month and the landlord stated that the tenant had paid a security deposit of \$257.50. The tenant's rent is partially subsidized by [REDACTED] and they pay a total of \$105.00 in rent, on the tenant's behalf, each month.
9. With her application, the landlord submitted a copy of her rent records [REDACTED] #1) showing the payments she had received from the tenant since 2010. The landlord pointed out that she had been receiving the subsidized payment of \$105.00 from [REDACTED] every month, but the tenant rarely paid the full amount of the remaining \$750.00 that he was responsible for. For instance, in June 2021 he had only paid \$520.00 of that \$750.00, in July 2021 he paid \$320.00, \$520.00 was paid on August 2021 and only \$300.00 for September 2021.
10. The landlord's records show that the tenant has accumulated rental arrears totalling \$1750.00 and she is seeking an order for a payment of that amount.

#### **Analysis**

11. I accept the testimony and evidence of the landlord in this matter and I agree with her that the tenant had not been paying his 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.
12. I calculate the rent owing to be \$1260.43 (\$1300.00 owing for the period ending 31 August 2021 less a credit of \$39.57cr for September 2021 (\$855.00 per month x 12 months = \$10,260.00 ÷ 365 days = \$28.11 per day x 13 days = \$365.43 less the \$105.00 paid by [REDACTED] on 02 September 2021 and \$300.00 paid by the tenant on 02 September 2021)).

#### **Decision**

13. The landlord's claim for a payment of rent succeeds in the amount of \$1260.43.
14. The tenant shall pay a daily rate of rent in the amount of \$28.11, beginning 14 September 2021, and continuing to the date the landlord obtains vacant possession of the rented premises.

## **Issue 2: Late Fees - \$75.00**

15. The landlord has assessed a \$75.00 late fee.

### **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 least May 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 the Rental Premises**

### **Relevant Submissions**

19. With her application, the landlord submitted a copy of a termination notice (█████#2) which she stated was delivered to the tenant on 11 June 2021. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 22 June 2021.
20. The tenant has not moved out as required and the landlord is seeking an order for vacant possession of the rented premises.

### **Analysis**

21. 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.*

22. According to the landlord's rent records, on 11 June 2021, when the notice was issued, the tenant was in arrears in the amount of \$1160.00 and had been carrying arrears since the beginning of May 2021. No payments were made to the landlord prior to the termination date set out in the notice.
23. As the notice meets all the timeframe requirements set out in this section of the Act, it is valid.

### **Decision**

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

### **Issue 4: Security Deposit**

26. The landlord stated that the tenant had paid a security deposit of \$257.50 when he moved into the unit in 2007. As the landlord's claim has been successful, she shall retain that deposit as outlined in this decision and attached.

## Summary of Decision

27. The landlord is entitled to the following:

- An order for vacant possession of the rented premises,
- A payment of \$2356.19, determined as follows:

a) Rent Owing .....	\$1260.43
b) Late Fees .....	\$75.00
c) LESS: Security Deposit .....	
<b>(\$257.50)</b>	
d) Total.....	<u>\$1077.93</u>
- A payment of a daily rate of rent in the amount of \$28.11, beginning 14 September 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.

14 September 2021

\_\_\_\_\_  
Date

