

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0381-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:15 AM on 27 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:
 - a. An order for a payment of rent in the amount of \$1490.00;
 - 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) 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 she has been properly served. The landlord submitted an affidavit with the application stating that he had served the tenant with notice of the hearing, by registered mail, on 10 September 2021. According to the associated tracking history, that notice was not collected until after the hearing. Although the tenant did not receive the application prior to the hearing, according to section 42.(6) of the *Residential Tenancies Act, 2018*, she is considered to have been served on the fifth day after mailing—15 September 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 her absence.

7. The landlord amended his application at the hearing and stated that he was now seeking \$2185.00 in rental arrears.

Issue 1: Rent - \$1210.50

Relevant Submissions

8. The landlord stated that he had entered into a 1-year, fixed-term rental agreement with the tenant on 01 October 2017. The current rent is set at \$725.00 and the landlord stated that the tenant had paid a security deposit of \$521.74 on 04 October 2017.
9. With his application, the landlord submitted a copy of his rent records showing the payments he had received from the tenant since she had moved in (█████#1). According to these records, the tenant last had a zero-balance at the end of May 2021. Prior to that, she had been carrying rental arrears for 2 years, despite making regular monthly payments.
10. Since May 2021, the tenant has only made one payment to the landlord—\$715.00, made on 02 July 2021. The landlord's records show that the tenant is currently in arrears in the amount of \$2185.00 for the period ending 30 September 2021 and he is seeking an order for a payment of that amount.

Analysis

11. I accept the landlord's testimony and evidence in this matter and I agree with him that the tenant has not been paying her rent as required and that he has only received one payment of \$715.00 over the past 4 months.
12. As the landlord is also seeking an order for vacant possession of the rented premises, I find that he is entitled to a payment of rent to the date of the hearing and a per diem thereafter.
13. I calculate that the landlord is entitled to a payment of \$2103.68 (\$1460.00 owing for the period ending 31 August 2021 and \$643.68 for September 2021 (\$725.00

per month x 12 months = \$8700.00 per year ÷ 365 days = \$23.84 per day x 27 days)).

Decision

14. The landlord's claim for a payment of rent succeeds in the amount of \$2103.68.
15. The tenant shall pay a daily rate of rent in the amount of \$23.84, beginning 28 September 2021, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Late Fees - \$75.00

16. The landlord has assessed a late fee of \$75.00.

Analysis

17. 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.

18. As the tenant has been arrears since 02 June 2021, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 3: Vacant Possession of Rented Premises

Relevant Submissions

20. With his application, the landlord submitted a copy of a termination notice (■#2) which he stated was personally delivered to the tenant on 18 August 2021. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 29 August 2021.
21. The landlord stated that the tenant has not moved out, as required, and he 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 18 August 2021, the date the termination notice was issued, the tenant was in arrears in the amount of \$1460.00 and had been in arrears since the beginning of June 2021. No payments were made after the notice was issued and since then rent for September 2021 has also come due.
24. 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

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.

Issue 4: Security Deposit

27. The landlord stated that the tenant had paid a security deposit of \$521.74 on 04 October 2017. As the landlord's claim has been successful, the landlord shall retain that deposit as outlined in this decision and attached order.

Summary of Decision

28. The landlord is entitled to the following:
 - A payment of \$1656.94, determined as follows:

| | | |
|---------------------------------------|------------------|-------------------------|
| a) | Rent Owing | \$2103.68 |
| b) | Late Fees | \$75.00 |
| c) LESS: Security Deposit..... | | (\$521.74) |
| d) Total..... | | <u>\$1656.94</u> |
 - An order for vacant possession of the rented premises,
 - A payment of a daily rate of rent in the amount of \$23.84, beginning 28 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.

29 September 2021

Date

