

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0395-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:15 AM on 04 January 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord" participated in the hearing. The respondents, [REDACTED] [REDACTED], hereinafter referred to as "the tenants", were not in attendance.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for a payment of rent in the amount of \$1333.33, and
 - An order for a payment of late fees in the amount of \$150.00.

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 24 of the *Residential Tenancies Act, 2018*, and rule 29 of the *Rules of the Supreme Court, 1986*.

Preliminary Matters

6. The tenants were not present or represented at the hearing and I was unable to reach them 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 respondents fail to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondents' absence so long as they have been properly served. With her application, the landlord submitted an affidavit stating that tenants had been served with the application, by e-mail, on 18 October 2021, and a copy of that e-mail was submitted with her application. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.

Issue 1: Rent - \$1333.33

Relevant Submissions

7. The landlord stated that she had entered into a 6-month, fixed-term lease with the tenants on 08 March 2021, and a copy of that executed agreement was submitted with her application (█ #1). The agreed rent was set at \$1250.00 per month and the landlord stated that the tenants had paid a security deposit of \$500.00.
8. The landlord stated that she was having problems with the tenants shortly after they moved in, and in May 2021, she issued them a termination notice. That notice was issued under section 24 of the *Residential Tenancies Act, 2018* (notice where tenant contravenes peaceful enjoyment and reasonable privacy) and it had an effective termination date of 28 May 2021. The tenants vacate on 03 June 2021.
9. With her application, the landlord submitted a copy of her rent records (█ #2) showing the payments she had received from the tenants since they moved in. According to these records, the tenants paid no rent for May 2021, and she billed them a pro-rated rent of \$83.33 for 2 days for June 2021.
10. The landlord is seeking an order for a total payment of \$1333.33 (\$1250.00 + \$83.33).

Analysis

11. I accept the landlord's claim that the tenants had not paid their rent as required. As no rent was paid for May 2021, I find that the landlord is entitled to \$1250.00 for that month, and she is also entitled to a pro-rated rent of \$83.33 for June 2021, as claimed (\$1250.00 for June 2021 ÷ 30 days x 2 days).

Decision

12. The landlord's claim for a payment of rent succeeds in the amount of \$1333.33.

Issue 2: Late Fees - \$150.00

13. The landlord has assessed late fees in the amount of \$150.00

Analysis

14. 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.*

15. As the tenants have been in arrears since 02 May 2021, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 3: Security Deposit

17. The landlord stated that the tenants had paid a total security deposit of \$500.00 and she testified that, a few days after the tenants moved out, she had returned to the tenants \$450.00 of that deposit. With respect to that remaining \$50.00, the landlord stated that she had not entered into any written agreement with the tenants on its disposition.
18. As the landlord's claim has been successful, she shall retain the remaining \$50.00 of the security deposit as outlined in this decision and attached order.

Issue 4: Hearing Expenses

19. The landlord paid a fee of \$20.00 to file this application. As her claim has been successful, the tenants shall pay that hearing expense.

Summary of Decision

20. The landlord is entitled to the following a payment of \$1378.33, determined as follows:

- a) Rent Owing \$1333.33
- b) Late Fees \$75.00
- c) Hearing Expenses..... \$20.00
- d) **LESS: Remaining Security Deposit..... (\$50.00)**
- e) Total..... **\$1378.33**

17 October 2022

Date

