

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0424-05

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 1:44 a.m. on 27-October- 2021.
2. The applicant, [REDACTED] hereinafter referred to as “the landlord” attended by teleconference.
3. The respondent, [REDACTED] hereinafter referred to as “the tenant” did not attend.

Preliminary Matters

4. The tenant was not present or represented at the hearing and I was unable to reach her by phone. 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 ([REDACTED] #01) with his application stating that he had served the tenant electronically to the email address that she provided and they use for communication. 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.
5. The Landlord amended the amount owing for rent from \$1,250.00 to \$1,850.00. He also asked that the security deposit not be applied to rent owing.

Issues before the Tribunal

6. The Landlord is seeking:
 - Rent paid \$1,850.00
 - Late fees \$75.00
 - Premises vacated
 - Hearing expenses reimbursed \$45.00

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
8. Also relevant and considered in the case is section 19: notice when failure to pay rent, section 34: requirement for notices and section 35: Service of documents; of the *Residential Tenancies Act 2018*.

Issue 1: Rent paid \$1,850.00

Relevant Submissions

9. The Landlord and Tenant entered into a written rental agreement (████#02) for a term of two years from April 01, 2021 – March 31, 2023. The rent is for \$900.00 pay own utilities, it is due on the first of each month. There was a security deposit paid of \$675.00 on April 01, 2021.
10. The landlord submitted a rent ledger (DW#03) the ledger was updated to reflect rent owed to date, see ledger below:

Rent Ledger

Date	Action	Amount	total
1-Apr-21	Rent due	\$ (900.00)	\$ (900.00)
1-Apr-21	Rent paid	\$ 900.00	
1-May-21	Rent due	\$ (900.00)	\$ (900.00)
1-May-21	Rent paid	\$ 900.00	\$ -
1-Jun-21	Rent due	\$ (900.00)	\$ (900.00)
2-Jun-21	Rent paid	\$ 900.00	\$ -
1-Jul-21	Rent due	\$ (900.00)	\$ (900.00)
6-Jul-21	Rent paid	\$ 900.00	\$ -
1-Aug-21	Rent due	\$ (900.00)	\$ (900.00)
1-Sep-21	Rent due	\$ (900.00)	\$ (1,800.00)
1-Sep-21	Rent paid	\$ 525.00	\$ (1,275.00)
1-Oct-21	Rent due	\$ (798.93)	\$ (2,073.93)
20-Oct-21	Rent paid	\$ 400.00	\$ (1,673.93)

\$900 rent x 12 months = \$10,800

\$10,800 per year divided by 365 days = \$29.59 a day

27 days in October x \$29.59 = \$798.93 to date

11. The Landlord submitted his ongoing communication with the Tenant concerning rent owing █████#06 & █████#07). The Tenant had made many promises of payment, however she did not make those payments.

Analysis

12. I accept the Landlord's testimony and supporting documentation of conversations with the Tenant concerning promises of payment █#06 & █#07).
13. Non-payment of rent is a violation of the rental contract signed between the Landlord and Tenant (█#02).
14. I find that the Tenant owes the landlord \$1,673.93.

Decision

15. The Tenant shall pay the Landlord \$1,673.93.

Issue 2: Late fees \$75.00

Relevant Submissions

16. The Landlord's rent ledger (█#03), as shown in paragraph 11, indicates that the Tenant fell into rental arrears after the August 1, 2021 payment came due.

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 August 2, 2021 the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

19. The tenant shall pay late fees to the landlord in the amount of \$75.00.

Issue 3: Premises vacated

Relevant Submissions

20. The Landlord testified that he served notice (████#04) electronically on September 20, 2021, to terminate early due to failure to pay rent. He submitted that text conversation (████#07), with the notice (████#04) attached. The termination date was for October 01, 2021.

Analysis

21. As shown on the Landlord's rent ledger █████#03) and displayed in paragraph 11, the Tenant had fallen into arrears on August 02, 2021.
22. Non-payment of rent is a violation of the rental contract.
23. The relevant subsections of s.19 of the Residential Tenancies Act, 2018 state:

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.

.....

24. At the time the Landlord served notice to the tenant, she had been in rental arrears since August 02, 2021.

25. The Landlord in a term rental agreement can give notice when the rent is overdue for 5 days. The Landlord can give notice for not less than 10 days after the notice is served on the tenant.
26. The termination notice served by the Landlord on the Tenant meets the requirements of the *Act*.

Decision

27. The landlord's claim for an order for vacant possession of the rented premises succeeds.
28. The tenant should have vacated on October 01, 2021.
29. 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: Hearing expenses reimbursed \$45.00

Relevant Submissions

30. The Landlord submitted receipts [REDACTED] #05) for the costs incurred while filing his application. The receipts indicate that the filing fee was \$20.00 and the Commissioner of Oaths fee was \$25.00: for a total of \$45.00.

Analysis

31. As the Landlord's claim is successful, the tenant shall pay the hearing expenses totaling \$45.00 to the Landlord.

Summary of Decision

32. The Landlord is entitled to:

• Rent owing.....	\$1,673.93
• Late fees.....	75.00
• Hearing expenses.....	<u>45.00</u>
Total.....	<u><u>\$1,793.93</u></u>

As well as

- A payment of a daily rate of rent in the amount of \$29.59 per day beginning October 28, 2021 and continuing to the date the landlord obtains possession of the rental unit.
- An order for vacant possession of the rented premises.
- 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.

November 3, 2021

Date

