

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0492-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 2:01 PM on 15 December 2021 via teleconference.
2. The applicant, [REDACTED] [REDACTED] was represented at the hearing by [REDACTED] [REDACTED] hereinafter referred to as "the landlord".
3. The respondent, [REDACTED] hereinafter referred to as "the tenant", did not participate.

Issues before the Tribunal

4. The landlord is seeking the following:
 - An order for a payment of rent in the amount of \$606.00,
 - 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

5. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
6. Also relevant and considered in this case is sections 15 and 19 of the *Residential Tenancies Act, 2018* and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

7. The tenant was not present or represented at the hearing and I was unable to reach him 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 he has been properly served. The landlord submitted an affidavit with his application stating that he had sent the application and notice of the hearing to the tenant by registered mail, on 15 November 2021. A review of the tracking history indicates that this was not picked up, however subsection 35(5) of the *Residential Tenancies Act* considers items served on the fifth day after mailing. 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.

8. The landlord amended his application at the hearing and stated that he was no longer seeking an order for vacant possession of the rental unit as the tenant moved out on 30 September 2021.

Issue 1: Rent - \$606.00

Relevant Submissions

9. The landlord testified that he had entered into a 1-year, fixed-term rental agreement with the tenant on 01 June 2021 and that the tenant took occupancy of the rental premises on 10 May 2021. The agreed rent was set at \$850.00 per month and no security deposit was collected.
10. The landlord testified he had issued a section 19 termination notice on 22 September 2021 with a stated move out date of 03 October 2021 (LL#1). The tenant vacated the rental premises on 30 September 2021.
11. With his application, the landlord submitted a copy of his rent records showing the rent payments he had received from the tenant since he moved into the unit (LL #2). The landlord testified that the tenant was subsidized by the province and explained how regular subsidy payments were received, in the amount of \$261.00 each month, but no payments were made by the tenant to account for the remaining monthly rent. According to these records, the tenant had a departing balance of \$606.00 as of 30 September 2021.

Analysis

12. I accept the landlord's claim that the tenant has not paid rent as required and her records show that the tenant is currently in arrears in the amount of \$606.00. As such, her claim succeeds.

Decision

13. The landlord's claim for a payment of rent succeeds in the amount of \$606.00.

Issue 2: Late Fees - \$75.00

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 tenant has been arrears since 02 August 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: Hearing Expenses

17. The landlord paid a fee of \$20.00 to file this application. As his claim has been successful, the tenant shall pay this hearing expense.

Summary of Decision

18. The landlord is entitled to the following:

- A payment of \$701.00, determined as follows:

a) Rent Owing	\$606.00
b) Late Fees	\$75.00
c) Hearing Expenses.....	\$20.00
d) Total.....	<u>\$701.00</u>

09 September 2022

Date

