

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0576-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:15 AM on 08 March 2022 via teleconference.
2. The applicant, [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 \$1,625.00,
 - An order for a payment of late fees in the amount of \$75.00.

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 are 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 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 her application stating that she sent the application and notice of the hearing to the tenant, by e-mail, on 31 December 2021 and proof of service was provided. 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.

Issue 1: Rent - \$1,625.00

Relevant Submissions

8. The landlord testified that she had entered into a 1-year, fixed-term lease with the tenant on 01 April 2021. The agreed rent was set at \$800.00 per month and the landlord testified that a security deposit in the amount of \$400.00 was paid on 23 March 2021.
9. The landlord stated that the tenant fell into rental arrears in October 2021, and on 25 November 2021 she served the tenant with a termination notice, and a copy of that notice was submitted with her application. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* (notice where failure to pay rent) and it had an effective termination date of 06 December 2021. The tenant vacated on 30 November 2021.
10. With her application, the landlord submitted a copy of her rent records showing the rent payments she had received from the tenant since he moved into the unit (L #2). According to these records, the tenant's rent cheque for October 2021 was returned for the reason of non-sufficient funds (NSF), and she testified that she was charged a fee of \$25.00 by her bank as a result. The landlord's records also show that no rent was paid for November 2021 either.
11. The landlord is seeking an order for a payment of \$1600.00 in rent, as well as the \$25.00 NSF she was charged.

Analysis

12. I accept the landlord's claim that tenant did not pay his rent as required, and the landlord's records show that no rent was paid for either October or November 2021—a total of \$1600.00. I address the NSF fees in the following section.

Decision

13. The landlord's claim for a payment of rent succeeds in the amount of \$1600.00.

Issue 2: Late Fees - \$75.00

Issue 3: NSF Fees - \$25.00

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.

(2) Where a cheque for the payment of rent is returned to a landlord by a financial institution because of insufficient funds, the landlord may charge the tenant a fee in the same amount as the fee charged to the landlord by the financial institution.

15. Regarding the late fees, 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.

16. The landlord's rent records show that the tenant has been in rental arrears since 02 October 2021. I therefore find that she is entitled to a payment of the maximum late fee of \$75.00 set by the minister.

17. The landlord also testified that she was charged a \$25.00 NSF fee by her bank for the cheque that was returned for October 2021. I therefore find that she is also entitled to a payment of the \$25.00 included in her rent records.

Decision

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

19. The landlord's claim for NSF fees succeeds in the amount of \$25.00.

Issue 4: Security Deposit

20. The landlord stated that the tenant had paid a security deposit of \$400.00 on 23 March 2021. As the landlord's claim has been successful, she shall retain that deposit as outlined in this decision and attached order.

Summary of Decision

21. The landlord is entitled to a payment of \$1300.00, determined as follows:

- a) Rent Owing\$1600.00
- b) Late Fees\$75.00
- c) NSF Fees.....\$25.00
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- d) **LESS: Security Deposit.....(\$400.00)**
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- e) Total.....**\$1300.00**

04 October 2022

Date

