

Residential Tenancies Tribunal

Application [REDACTED]

Amended Decision 21-0315-05

Jacqueline Williams
Adjudicator

Introduction

1. The hearing was called at 01:09 p.m. on September 08, 2021 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord," attended by teleconference.
3. The respondent, [REDACTED] hereinafter referred to as "the tenant" attended by teleconference.

Issues before the Tribunal

4. The landlord is seeking the following:
 - An order for payment of rent in the amount of \$1699.00 and late fees of \$17.00
 - An order for vacant possession of the rented premises
 - Reimbursement of hearing expenses

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 section 15 and section 19 of the *Residential Tenancies Act, 2018*: notice when failure to pay rent, section 34: requirements for notices, section 35: Service of documents.

Preliminary Matters

7. The landlord amended her application to reflect rent owing to today's date and she provided a current rent ledger (████#01). The amount now owing has been amended from \$505.00 past due rent and \$63.00 late fees to \$1699.00 past due rent and \$17.00 late fees.

Issue 1: Payment of rent in the amount of \$1,699.00

Relevant Submissions

Landlord's Position

8. The landlord and tenant entered a written rental agreement beginning May 01, 2020. The lease is a monthly lease for \$750.00 a month due on the first of the month. There was \$375.00 damage deposit paid on April 25, 2020.
9. The landlord submitted a rent ledger (████#01) for the period of May 01, 2020 until July 1, 2021.
10. The tenant was credited for two full and two partial months rent due to a sewage backup and the subsequent repairs. The tenant did not live at the rental during the month of August 2020 and she was credited the cost of the heat and light for that month.
11. The rental arrears are documented for the entire tenancy, rental arrears are included in the amount owing on the landlord's submitted ledger (████#01).
12. The landlord stated that the last payment the tenant paid was for \$330.00 in July and that no rent has been paid since that time.

Tenant's Position

13. The tenant had questions on the earlier portion of the submitted rent ledger (████#01). It appeared to her that she was owing the portion that was paid by the insurance company. It was explained that the amounts in question were actually a credit to her for overpayment.
14. The tenant did not agree that she hadn't paid rent since July and stated that she paid the full amount of August rent on August 01, 2021.

Analysis

15. The landlord has shown documentation (████#01) indicating the rent paid with the late fees owing. The ledger in question was complicated. The amounts owing are unclear because they tabulated in the totals at the bottom of the page instead of an ongoing calculation. I have re-entered the ledger information to show the amount owing at each stage for the purpose of clarity in this decision. The amount owing to the landlord is indicated with a negative number.

16. The recalculation is as follows:

Date	Action	Amount	Balance
1-May-20	Rent Due	-750	-750
1-May-20	Rent Paid	750	0
1-Jun-20	Rent due	-750	-750
1-Jun-20	Rent paid	750	0
1-Jul-20	Rent due	-750	-750
2-Jul-21	rent paid	750	0
2-Jul-21	late fee	-5	-5
31-Jul-21	Late fee 29 x\$2	-58	-63
1-Aug-20	Rent due	-750	-813
10-Sep	Rebate from insurance July	193	-620
10-Sep-20	Rebate from insurance Aug	750	130
1-Sep-20	Rent due	-750	-620
10-Dec-20	Rebate from insurance Sept	508	-112
11-Sep-20	Rent Paid	308	196
11-Sep-20	late fees 10 days	-21	175
1-Oct-20	Rent Due	-750	-575
10-Dec-20	Rebate from insurance for Oct	750	175
5-Oct-20	Rent paid	443	618
1-Nov-20	Rent due	-750	-132
2-Nov-20	Rent paid	306	174
2-Nov-20	late fees 1 day	-5	169
1-Dec-20	Rent due	-750	-581
2-Dec-20	Rent paid	375	-206
15-Dec-20	heat bill rebate	156	-50
31-Dec-20	Late fees 30 days	-63	-113
1-Jan-21	Rent due	-750	-863
15-Jan-21	Rent paid	500	-363
6-Jan-21	Late fee 30 Days maxed out	-12	-375
1-Feb-21	Rent Due	-750	-1125
2-Feb-21	Rent Paid	700	-425
28-Feb-21	late fee 27 days maxed out	0	-425
1-Mar-21	Rent due	-750	-1175
1-Mar-21	Rent paid	750	-425
31-Mar-21	late fees 30 days maxed out	0	-425
1-Apr-21	Rent due	-750	-1175
1-Apr-21	Rent paid	735	-440
Apr 30 ,2021	late fees 29 days maxed out	0	-440
1-May-21	Rent due	-750	-1190
3-May-21	Rent Paid	390	-800
14-May-21	Rent Paid	375	-425

31-May-21	late fees 30 days maxed out	0	-425
1-Jun-21	Rent due	-750	-1175
1-Jun-21	rent paid	750	-425
23-Jun-21	rent paid	200	-225
30-Jun-21	late fees 29 days maxed out	0	-225
1-Jul-21	Rent due	-750	-975
1-Jul-21	Rebate for plumbing	100	-875
17-Jul-21	Rent paid	330	-545
20-Jul-21	Rent paid	100	-445
31-Jul-21	late fees 30 days maxed out	0	-445
1-Aug-21	Rent due	-750	-1195
31-Aug-21	late fees 30 days maxed out	0	-1195
1-Sep-21	Rent due 8 days x 24.66	-197.28	-1392.28

17. There was conflicting testimony concerning the August rent; the tenant indicated that she payed it and the landlord stated it was not received. As it was impossible to determine if the August rent had been paid, the tenant and landlord were both directed to submit bank information, by end of business on the day of the hearing, to show either payment or non-payment of rent. The landlord submitted her banking information [REDACTED] 03) within the time frame showing the last transaction received from the tenant was the July payment. The tenant did not submit any further evidence after the conclusion of the hearing. It was determined that the August rent is still owing to the landlord.
18. The table shows periods of rental arrears as well as periods where there is an overpayment by the tenant. Due to a sewer backup there have been a number of months paid by the insurance company for the inconvenience to the tenant: \$193 for July, \$750 for August, \$508 for September and \$750 for October. The insurance also covered the utilities bill of \$156.00 for August, the payment was received and credited in December. The final amount owing totals \$1,392.28 including \$75.00 late fees (December 01, 2020 – January 06, 2021).
19. September rent is calculated as $\$750.00 \times 12 \text{ months} = \$9,000.00 / 365 \text{ days} = \24.66 per day. Rent due as of September 8, 2021 is 8 days x 24.66 = \$197.28.
20. Rent owed to the landlord \$1,392.28 - \$75.00 late fees for a total of \$1317.28.

Decision

21. The landlord's claim for a payment of rent for a total of \$1,421.28 has been calculated in the above table to succeed in the amount of \$1,317.28.
22. The tenant shall pay the outstanding rent immediately.

Issue 2: Payment of late fees of \$17.00

Relevant Submissions

23. The landlord's rent ledger ([REDACTED] #01), as well as, the ledger included in paragraph 16 show periods of late payment by the tenant. The calculation of late payment is as follows

\$5.00 for the first day and \$2.00 for each following day, to a maximum amount of \$75.00. Both ledgers have included the late fee into the total amounts owing.

24. Once a tenant is up to date, as this tenant is in November 2020, future late fees are calculated starting from the next late payment.
25. The tenant was in rental arrears when the rent became due on December 1, 2020. On December 2nd the tenant is charged \$5.00 and then for each subsequent day \$2.00. As of January 6, 2021, the tenant has reached the maximum amount of late fees that can be charged \$75.00. The tenant remains in arrears until the date of the hearing.
26. The relevant subsections of s.15 of the Residential Tenancies Act, 2018 state:

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.*

27. As the maximum amount of rent arrears that can be awarded is \$75.00, I find that the tenant owes \$75.00 to the landlord.

Decision

28. The landlords claim for late fees succeeds in the amount of \$75.00.
29. The tenant shall pay the late fees immediately.

Issue 2: Vacant Possession of the Rental Premises

Relevant Submission

30. The Landlord served notice to terminate early due to failure to pay rent █#02).
31. Non-payment of rent violates the rental agreement.

Analysis

32. It has been determined by this board that the tenant has been in rental arrears since December 02, 2020.

33. 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.

....

34. At the time the Landlord served notice to the tenant (█#02) on July 12, 2021, the rent had been in arrears since December 2, 2020.

35. The landlord in a month to month 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.

36. Section 28. (2) of the *Residential Tenancies Act 2018*, says that if a tenant is in arrears for 5 days or more then the landlord can give notice of not less than 10 days. The termination notice was served on July 12, 2021 with a termination date of July 23, 2021. This meets the standards in the *Act*.

Decision

37. The landlord's claim for an order for vacant possession of the rented premises succeeds.

38. The tenant should have vacated on July 23, 2021.

39. 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 3: Reimbursement for Cost of hearing

40. As the landlord's claim has been successful, the tenant shall pay the hearing expense (█#04) of \$20.00 for the cost of filing this application.

Summary of Decision

41. The landlord is entitled to the following:

- Rent owing \$1,317.28 and late fees \$75.00 totaling \$1,392.28 as well as, the \$20.00 filing fee. For a total of \$1,412.28
- A payment of a daily rate of rent in the amount of \$24.66 per day beginning September 9, 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.

September 28, 2021

Date

