

Residential Tenancies Tribunal

Application 2022 No. 37NL

Decision 22-0037-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:15 AM on 29 March 2022 via teleconference.
2. The applicant, [REDACTED], represented by [REDACTED], hereinafter referred to as "the landlord", attended the hearing.
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 vacant possession of the rented premises;
 - An order for payment of rent in the amount of \$255.00;
 - An order for 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 is 15, 19, 34 and 35 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 her by telephone at the start of the hearing. 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 with her application stating that she served the tenant, by registered mail, on 18 February 2022, and the tracking history shows that it was signed for, by the tenant, on 25 February 2022. 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.

8. The landlord amended her application at the hearing and stated that the total rent owing was \$127.50.

Issue 1: Rent Owing - \$127.50

Relevant Submissions

9. The landlord stated that there is a written rental agreement established with the tenant and that the tenant has occupied the rental premises since April 2019. She further stated that there was no security deposit paid and that the current tenancy is running month-to-month.
10. The landlord submitted a rent ledger (████ #1) to show sporadic and partial payments of rent by the tenant. She confirmed that the current rent for the premises is \$255.00 a month and that the tenant last had a zero dollar balance in September 2021.
11. Since that time, the tenant has failed to pay the full amount of rent that was owing each month, and the rental arrears accrued to \$510.00 for the period ending 28 February 2022. The rent for March 2022 was charged on the first day of that month bringing the balance to \$765.00.
12. As an update to the rental ledger previously submitted (current as to 7 January 2022), the landlord reported that the tenant made a payment of \$510.00 on 11 March 2022 and a further payment of \$127.50 on 25 March 2022 leaving tenant in arrears as of the date of the hearing in the amount of \$127.50 exclusive of late fees.
13. The landlord is seeking an order for payment of the rent in the amount of \$127.50.

Analysis

14. I accept the landlord's claim that the tenant has not paid rent as required. I also accept her records which show that the tenant owes \$127.50 for the period ending 31 March 2022. As such, her claim succeeds in that amount.

Decision

15. The landlord's claim for a payment of rent succeeds in the amount of \$127.50.

Issue 2: Late Fees - \$75.00

16. The landlord has assessed late fees in the amount of \$75.00.

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.

18. 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.

19. As the tenant has been arrears since at least October 2021 and the beyond the 18 January 2022 date of this hearing, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 3: Vacant Possession of Rented Premises

Relevant Submissions

21. The landlord submitted a copy of a termination notice (■ #2) with her application which she stated was sent by email prior to 4:00 PM on 9 December 2021.

22. This termination notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 16 December 2021.

23. The landlord stated that the tenant has not vacated the rented premises as required and she is seeking an order for vacant possession.

Analysis

24. Section 19 of the *Residential Tenancies Act, 2018* states:

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.

(2) Notwithstanding subsection (1), where the tenant pays the full amount of the overdue rent, including a fee under section 15, before the date specified in the notice under paragraph (1)(a) or (b), the rental agreement is not terminated and the tenant is not required to vacate the residential premises.

25. Section 19 of the Act allows a landlord to terminate a rental agreement when rent is overdue by 5 days or more. The tenant is required to vacate on a specified date not less than 10 days after the notice is served.

26. According to the landlord's rent records, on 09 December 2021 the tenant had been rental arrears for more than two months and the landlord was therefore in a position to terminate the rental agreement under this section of the Act.

27. However, the termination notice issued by the landlord is not valid. A notice under this section of the Act must specify a termination date that is "not less than 10 days after the notice is served on the tenant". But as the notice was served on 09 December 2021, the earliest date the landlord could require the tenant to vacate would have been 20 December 2021, not 16 December 2021.

Decision

28. The landlord's claim for an order for vacant possession of the rented premises does not succeed.

Issue 4: Hearing Expenses

29. As the landlord's claim has been partly successful, the tenant shall pay her hearing expense of \$20.00 for the costs of filing this application.

Summary of Decision

30. The landlord is entitled to the following:

- A payment of \$222.50, determined as follows:

a) Rent Owing	\$127.50
b) Late Fees	\$75.00
c) Hearing Expenses.....	\$20.00
d) Total	<u>\$222.50</u>

31. The landlord's claim for an order for vacant possession of the rented premises does not succeed.

29 March 2022

Date

John R. Cook
Residential Tenancies Tribunal