

Residential Tenancies Tribunal

Application 2022 No. 53NL

Decision 22-0053-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 2:00 PM on 12 April 2022 via teleconference.
2. The applicant, [REDACTED], was represented at the hearing [REDACTED] [REDACTED], hereinafter referred to as "the landlord". The respondent, [REDACTED], hereinafter referred to as "the tenant", was not in attendance.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for a payment of rent in the amount of \$999.00,
 - 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

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. 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

6. 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. With her application, the landlord submitted an affidavit stating that tenant had been served with the application, by registered mail, and the associated tracking history shows that it was delivered on 01 March 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 his absence.

7. The landlord amended her application at the hearing and stated that she was now seeking a total claim of rent in the amount of \$935.00.

Issue 1: Rent - \$935.00

Relevant Submissions

8. The landlord stated that she had entered into a monthly rental agreement with the tenant on 01 December 2019. The current rent is set at \$845.00 per month and the landlord stated that the tenant had paid a security deposit of \$650.00.
9. The landlord submitted rent records at the hearing (■ #1) showing the rent payments the tenant had made since he moved into the property. These records show that up to November 2021, the tenant always paid the required rent, each month, and on the day it was due. Since December 2021, however, although the tenant is making regular payments, those payments are each around several hundred dollars short of the required \$845.00.
10. According to those records, the tenant now has a balance owing of \$935.00 for the period ending 30 April 2022. The landlord is seeking an order for a payment of that amount.

Analysis

11. I accept the testimony of the landlord in this matter and I find that, since December 2021, the tenant had not been paying the required amount of rent each month and his rental arrears have been accruing since then.
12. As the landlord is also seeking an order for vacant possession of the rented premises, I find that the landlord is entitled to a payment of rent to the date of the hearing, and a per diem thereafter.
13. I calculate that amount to be \$423.36 (\$713.00 owing for the period ending 31 March 2022 less a credit of \$289.64cr for April 2022 (\$845.00 per month x 12 months = \$10,140.00 per year ÷ 365 days = \$27.78 per day x 12 days = \$333.36, less the payment of \$623.00 received on 01 April 2022)).

Decision

14. The landlord's claim for a payment of rent succeeds in the amount of \$423.36.
15. The tenant shall pay a daily rate of rent in the amount of \$27.78, beginning 13 April 2022, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Late Fees - \$75.00

16. The landlord has assessed a late fee 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.

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 in arrears since 02 December 2021, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 3: Vacant Possession of Rented Premises

Relevant Submissions

20. With her application, the landlord submitted a copy of a termination notice that she stated was delivered to the tenant, by her resident manager, on 20 January 2022 (█ #2). That notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 31 January 2022.
21. The landlord stated that the tenant has not moved out, as required, and she is seeking an order for vacant possession of the rented premises.

Analysis

22. 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.

23. On 20 January 2022, when the termination notice was issued, the tenant was in arrears in the amount of \$999.00, and had been in rental arrears since the beginning of December 2021, a period longer than 5 days.
24. The tenant did make one payment of \$516.00 prior to the effective date of the notice, 31 January 2022, but this payment did not cover the full amount that was owing, and only reduced the balance to \$483.00.

25. As the notice meets all the requirements set out in this section of the *Act*, and as it was properly served, it is a valid notice.

Decision

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

27. 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: Security Deposit

28. The landlord stated that the tenant had paid a security deposit of \$650.00 on 02 December 2019, and that payment is recorded in her rent records. As the landlord's claim has been successful, she shall retain a portion of that deposit as outlined in this decision and attached order.

Issue 5: Hearing Expenses

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

Summary of Decision

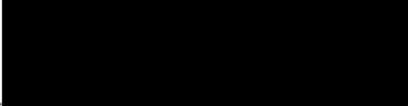
30. The landlord is entitled to the following:

- Authorization to retain \$518.36 of the security deposit, determined as follows:
 - a) Rent Owing\$423.36
 - b) Late Fees\$75.00
 - c) Hearing Expenses.....\$20.00
 - d) Total.....\$518.36
- An order for vacant possession of the rented premises,
- A payment of a daily rate of rent in the amount of \$27.78, beginning 13 April 2022 and continuing to the date the landlord obtains possession of the rental unit,

- 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.

18 April 2022

Date


John R. Cook
Residential Tenancies Tribunal