

Residential Tenancies Tribunal

Application 2022 No. 74NL

Decision 22-0074-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 11:15 AM on 26 April 2022 via teleconference.
2. The applicants, [REDACTED] ("[REDACTED]") and [REDACTED] ("[REDACTED]"), were represented at the hearing by [REDACTED], hereinafter referred to as "the landlord". The respondents, [REDACTED] and [REDACTED], hereinafter referred to as "the tenants", were 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 \$1000.00,
 - An order for a payment of late fees in the amount of \$150.00,
 - An order for vacant possession of the rented premises, and
 - Authorization to retain the security deposit of \$500.00.

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 is section 19 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

6. The tenants were not present or represented at the hearing and I was unable to reach them 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 respondents' absence so long as they have been properly served. The landlord submitted an affidavit with his application stating that he served the tenants, by e-mail, on 30 March 2022, and a copy of that e-mail was submitted with his application. 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.

7. The landlord amended his application at the hearing and stated that he was now seeking a total claim of rent in the amount of \$3700.00.

Issue 1: Rent - \$3700.00

Relevant Submissions

8. The landlord stated that [REDACTED] and [REDACTED] had entered into a 1-year, fixed-term rental agreement with the tenant, commencing 01 December 2018, and in January 2019, he was hired as their property manager. The agreed rent is set at \$900.00 per month and it is acknowledged in the lease ([REDACTED] #2) that the tenant had paid a security deposit of \$500.00.
9. The landlord testified that in December 2021, the tenants only paid \$800.00 of the required \$900.00 monthly rent, leaving a balance of \$100.00. He stated that since then, the rent for January, February, March and April 2022 has not been paid. The landlord calculates that the tenant owes \$3700.00 for the period ending 30 April 2022.

Analysis

10. I accept the testimony of the landlord in this matter and I find that the tenant owes \$100.00 for December 2021 and that he had made no rent payments in 2022. As the landlord is also seeking an order for vacant possession of the rented premises, I find that he is entitled to a payment of rent to the date of the hearing and a per diem thereafter.
11. I calculate the amount owing to be \$3569.34 (\$2800.00 for the period ending 31 March 2022 (\$100.00 for December 2021 and \$900.00 for each of January, February and March 2022) and \$769.34 for April 2022 (\$900.00 per month x 12 months = \$10,800.00 per year ÷ 365 days = \$29.59 per day x 26 days)).

Decision

12. The landlord's claim for a payment of rent succeeds in the amount of \$3569.34.

13. The tenants shall pay a daily rate of rent in the amount of \$29.59, beginning 27 April 2022, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Late Fees - \$150.00

Relevant Submissions

14. The landlord has assessed a late fee of \$150.00.

Analysis

15. 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.

16. 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

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

Issue 3: Vacant Possession of Rented Premises

Relevant Submissions

18. With his application, the landlord submitted a copy of a termination notice that he stated he had sent to the tenants, by e-mail, on 28 March 2022 (█ #1). He also testified that a copy of that notice was posted to the tenants' door on that same

day. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 08 April 2022.

19. The landlord stated that the tenants have not moved out, as required, and he is seeking an order for vacant possession of the rented premises.

Analysis

20. 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.

21. On 28 March 2022, when the termination notice was issued, the tenants had been in rental arrears for over 3 months. That notice had an effective termination date of 08 April 2022 and I find that no payments were made to the landlord prior to that date.
22. As the termination notice meets all the requirements set out in this section of the Act, and as it was properly served, I find that the landlord's claim for an order for possession of the rented premises succeeds.

Decision

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

24. The tenants 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

25. The landlord stated that the tenants had paid a security deposit of \$500.00 on 19 November 2018 and receipt of that deposit is acknowledged in the submitted rental agreement ([redacted] #2). As the landlord's claim has been successful, he shall retain that deposit as outlined in this decision and attached order.

Summary of Decision

26. The landlord is entitled to the following:

- A payment of \$3144.34, determined as follows:

a) Rent Owing	\$3569.34
b) Late Fees	\$75.00
c) LESS: Security Deposit..... (\$500.00)	
d) Total	<u>\$3144.34</u>
- An order for vacant possession of the rented premises,
- A payment of a daily rate of rent in the amount of \$29.59, beginning 27 April 2022 and continuing to the date the landlord obtains possession of the rental unit,
- The tenants 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.

28 April 2022

Date

John R. Cook
Residential Tenancies Tribunal