

Residential Tenancies Tribunal

Application 2022 No. 176NL

Decision 22-0176-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:16 AM on 28 April 2022 via teleconference.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED], hereinafter referred to as "the landlord". The respondents, [REDACTED] and [REDACTED], hereinafter referred to as "the tenants", did not participate.

Issues before the Tribunal

3. The landlord seeking the following:
 - An order for a payment of rent in the amount of \$3525.00,
 - An order for a payment of late fees, 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 tenants were not present or represented at the hearing and I was unable to reach them by telephone at the commencement 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 respondents fail 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 her application stating she had personally served the tenants with the application on 09 March 2022. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlords, I proceeded with the hearing in their 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 \$4525.00.

Issue 1: Rent - \$4525.00

Relevant Submissions

8. The landlord stated that she had entered into a monthly rental agreement with the tenants on 07 December 2019. The agreed rent was set at \$1000.00 and the landlord testified that the tenants had paid a security deposit of \$700.00.
9. With her application, the landlord submitted a copy of her rent records (■■■ #1). The landlord stated that the last payment she had received from the tenant was \$975.00, paid in January 2022. She stated that \$500.00 of that amount was applied to the balance owing for rent for November 2021, and she applied the remaining \$475.00 towards rent for December 2021, leaving a balance of \$525.00 owing for that month. The landlord stated that no payments have been made since.
10. The landlord is seeking an order for a payment of the remaining \$525.00 owing for December 2021, as well as an additional \$4000.00 for the months of January, February, March and April 2022.

Analysis

11. I accept the landlord's claim that the tenant has not paid rent as required, and I agree with her that the tenant owes \$4525.00 for the period ending 30 April 2022.
12. As the landlord is also seeking an order for vacant possession of the rented premises, I find that she is entitled to a payment of rent to the date of the hearing and a per diem thereafter.
13. I calculate the amount owing to be \$4445.64 (\$3525.00 for the period ending 31 March 2022 and \$920.64 for April 2022 (\$1000.00 per month x 12 months = \$12,000.00 per year ÷ 365 days = \$32.88 per day x 28 days = \$263.00)).

Decision

14. The landlord's claim for a payment of rent succeeds in the amount of \$4445.64.
15. The tenants shall pay a daily rate of rent in the amount of \$32.88, beginning 29 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 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 tenants have been arrears since at least November 2021, 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 succeeds in the amount of \$75.00.

Issue 3: Vacant Possession of Rented Premises

Relevant Submissions

21. With her application, the landlord submitted a copy of a termination notice (█ #2) which she stated she had personally delivered to the tenants on 12 January 2022. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 23 January 2022.
22. The landlord stated that the tenants have not moved out, as required, and she is seeking an order for vacant possession of the rented premises

Analysis

23. 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.

24. On 12 January 2022, the day that the notice was issued, the tenants had been in arrears for well over a month, and since that time the rent for February, March and April 2022 has also come due.
25. As the notice meets all the requirements set out in this section of the Act, and as it was properly served, it is valid.

Decision

26. The landlords' claim for an order for vacant possession of the rented premises succeeds.
27. 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

28. The landlord stated that the tenants had paid a security deposit of \$700.00 on 08 December 2019. As the landlord's claim has been successful, she shall retain that deposit as outlined in this decision and attached order.

Issue 5: Hearing Expenses

29. With their application, the landlord submitted a receipt showing that she had paid a fee of \$20.00 to file this application. As the landlord's claim has been successful, the tenants shall pay this hearing expense.

Summary of Decision


30. The landlord is entitled to the following:
 - A payment of \$3840.64, determined as follows:

a) Rent Owning	\$4445.64
b) Late Fees	\$75.00
c) Hearing Expenses.....	\$20.00
 d) LESS: Security Deposit.....	 (\$700.00)
 e) Total	 <u>\$3840.64</u>
 - An order for vacant possession of the rented premises,
 - A payment of a daily rate of rent in the amount of \$32.88, beginning 29 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.

03 May 2022

Date



John

Residential Tenancies Tribunal