

Residential Tenancies Tribunal

Application 2022 No. 324NL

Decision 22-0324-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:15 AM on 11 May 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing. 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 \$1300.00,
 - An order for a payment of late fees in the amount of \$75.00,
 - An order for vacant possession of the rented premises, and
 - Authorization to retain the \$350.00 security deposit.

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 her 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 she has been properly served. With her application, the landlord submitted an affidavit stating that the tenant had been served with the application, by e-mail, on 28 April 2022, and the landlord pointed out that the tenant had supplied her with her e-mail address in the rental agreement. 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 her application at the hearing and stated that she was now seeking a total claim of rent in the amount of \$2600.00.

Issue 1: Rent - \$2600.00

Relevant Submissions

8. The landlord stated that she had entered into a 1-year, fixed-term rental agreement with the tenant on 01 November 2021, and a copy of that executed lease was submitted with her application (■ #1). The agreed rent is set at \$1300.00 per month and it is acknowledged in the lease that the tenant had paid a security deposit of \$650.00.
9. The landlord submitted rent records at the hearing (■ #2) showing the rent payments the tenant had made since she moved into the property. According to these records, the tenant overpaid her first month's rent by \$100.00. After that, the landlord received the required rent payments through to the period ending 31 March 2022. Since March 2022, though, no payments have been made.
10. The landlord is seeking an order for a payment of rent for the months of April and May 2022, \$2600.00, less the \$100.00 overpayment from November 2021.

Analysis

11. I accept the testimony of the landlord in this matter and I find that, since March 2022, the tenant had not paid any rent to the landlord. 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.
12. I calculate that amount to be \$1670.14 (\$1200.00 owing for the period ending 30 April 2022 and \$470.14 owing for May 2022 (($\$1300.00 \text{ per month} \times 12 \text{ months} = \$15,600.00 \text{ per year} \div 365 \text{ days} = \$42.74 \text{ per day} \times 11 \text{ days} = \470.14))).

Decision

13. The landlord's claim for a payment of rent succeeds in the amount of \$1670.14.
14. The tenant shall pay a daily rate of rent in the amount of \$42.74, beginning 12 May 2022, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Late Fees - \$75.00

15. The landlord has assessed a late fee of \$75.00.

Analysis

16. 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.*

17. As the tenant has been in arrears since 02 April 2022, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 3: Vacant Possession of Rented Premises

Relevant Submissions

19. With her application, the landlord submitted copies of 2 termination notices that she had sent to the tenant, by text-message, on 07 April 2022. One of the notices (████ #3) was issued under section 19 of the *Residential Tenancies Act, 2018* (notice where failure to pay rent) and it had an effective termination date of 18 April 2022.
20. The other notice (████ #4) was issued under section 24 of the *Act* (notice where tenant contravenes peaceful enjoyment and reasonable privacy) and this notice had an effective termination date of 13 April 2022. The landlord stated that she had received numerous complaints from the occupants in the downstairs' unit about noise coming from the tenant's apartment. She also stated that the police, as well as representatives from the Town of █████, had made several visits to the unit in response to these noise complaints.
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. Statutory condition 7.(a), set out in section 10.(1) of the *Residential Tenancies Act, 2018* states:

Statutory conditions

10. (1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:

...

7. Peaceful Enjoyment and Reasonable Privacy -

(a) The tenant shall not unreasonably interfere with the rights and reasonable privacy of a landlord or other tenants in the residential premises, a common area or the property of which they form a part.

and according to section 24 of this *Act*:

Notice where tenant contravenes peaceful enjoyment and reasonable privacy

24. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes statutory condition 7(a) set out in subsection 10(1), the landlord may give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises on a specified date not less than 5 days after the notice has been served.

(2) In addition to the requirements under section 34, a notice under this section shall

- (a) be signed by the landlord;
- (b) state the date on which the rental agreement terminates and the tenant is required to vacate the residential premises; and
- (c) be served in accordance with section 35.

23. With respect to the termination notice (█ #4) issued under this quoted section of the Act, I find that it is not a valid notice. The only evidence presented at the hearing concerning the issue of noise, was the landlord's testimony about what the occupants in the downstairs apartment had told her. But that evidence is hearsay evidence. Those occupants were not called as witnesses to give any first-hand account about what had been taking at the complex or to give any evidence that the noise was interfering with their peaceful enjoyment. Additionally, no evidence was presented at the hearing to corroborate the landlord's claim that the police had visited the tenant's unit.

24. However, I do find that the other termination notice (█ #3) is valid. Section 19 of the Act 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. On 07 April 2022, when the termination notice was issued, the tenant was in arrears in the amount of \$1200.00, and had been in rental arrears since the beginning of that month, a period of 5 days. The tenant made no rent payments after that notice was issued and since then the rent for May 2022 has also come due.
26. 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

27. The landlord's claim for an order for vacant possession of the rented premises succeeds.
28. 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

29. The landlord stated that the tenant had paid a security deposit of \$650.00 on 01 November 2022, and receipt of that deposit is acknowledged in the submitted lease. As the landlord's claim has been successful, she shall retain that deposit as outlined in this decision and attached order.

Summary of Decision

30. The landlord is entitled to the following:
 - A payment of \$1095.14, determined as follows
 - a) Rent Owing\$1670.14
 - b) Late Fees\$75.00
 - c) **LESS: Security Deposit..... (\$650.00)**
 - d) Total.....\$1095.14
 - An order for vacant possession of the rented premises,

- A payment of a daily rate of rent in the amount of \$42.74, beginning 12 May 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.

16 May 2022

Date



John R. Cook
Residential Tenancies Tribunal