

Residential Tenancies Tribunal

Application 2022 No. 331NL

Decision 22-0331-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 2:00 PM on 15 June 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, participated in the hearing. 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 \$875.00,
 - An order for a payment of late fees in the amount of \$53.00,
 - An order for vacant possession of the rented premises, and
 - Authorization to retain the \$550.00 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 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 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 affidavits with her application stating that she had served the tenants, by e-mail, on 25 May 2022, and copies of those e-mails were submitted with her application. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, 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 \$1890.00.

Issue 1: Rent - \$1890.00

Relevant Submissions

8. The landlord stated that she had entered into a monthly rental agreement with the tenants, commencing 01 February 2022, and a copy of that executed agreement was submitted with her application (████ #1). The agreed rent was set at \$875.00 per month and it is acknowledged in the rental agreement that the tenants had paid a security deposit of \$550.00.
9. With her application, the landlord submitted a copy of her rent records (████ #2) showing the payments the tenants had made since they had moved into the unit. According to these records, tenants paid their rent for February and March 2022, but since then, the landlord has only received 1 payment, on 02 May 2022, in the amount of \$300.00
10. The landlord calculates that, with the security deposit factored in, the tenants owe her \$1890.00.

Analysis

11. I accept the testimony of the landlord in this matter and I find that the tenants have not been paying rent as required, and that since April 2022, the landlord has only received a total of \$300.00.
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. Leaving aside the security deposit, I calculate that the tenants owe the landlord \$1881.55 (\$1450.00 for the period ending 31 May 2022 (\$875.00 x 2 months, less the payment of \$300.00) and \$431.55 for June 2022 (\$875.00 per month x 12 months = \$10,500.00 per year ÷ 365 days = \$28.77 per day x 15 days)).

Decision

14. The landlord's claim for a payment of rent succeeds in the amount of \$1881.55.
15. The tenants shall pay a daily rate of rent in the amount of \$28.77, beginning 16 June 2022, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Late Fees - \$53.00

16. The landlord has assessed late fees in the amount of \$53.00.

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 April 2022, 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. With her application, the landlord submitted a copy of a termination notice that he stated was sent to the tenants, by text-message, on 07 April 2022 (■■■■ #3). She also stated that a copy of that notice was also placed under the tenants' door on that same date. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 18 April 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 07 April 2022, when the termination notice was issued, the tenants were in arrears in the amount of \$875.00, and had been in rental arrears since the beginning of that month, a period of 5 days. No payments were made prior to the termination date set out in the notice.

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 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 \$550.00 on 20 January 2022 and receipt of that deposit is acknowledged in the submitted rental agreement. 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. The landlord 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:
- An order for a payment of \$1426.55, determined as follows:
 - a) Rent Owing\$1881.55
 - b) Late Fees\$75.00
 - c) Hearing Expenses.....\$20.00
 - d) **LESS: Security Deposit..... (\$550.00)**
 - e) Total.....**\$1426.55**
 - An order for vacant possession of the rented premises,
 - A payment of a daily rate of rent in the amount of \$28.77, beginning 17 June 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.

21 June 2022

Date



John R. Cook
Residential Tenancies Tribunal