

Residential Tenancies Tribunal

Application 2022 No. 0388NL

Decision 22-0388-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 11:16 AM on 30 June 2022 via teleconference.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED] [REDACTED], hereinafter referred to as "the landlord". The respondent, [REDACTED] [REDACTED], hereinafter referred to as "the tenant", did not participate.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for vacant possession of the rented premises;
 - An order for a payment of rent in the amount of \$2920.00; and
 - An order for a payment of late fees in the amount of \$525.00.

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 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. The landlord submitted an affidavit with her application stating that the tenant was personally served with the application 10 June 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 his application at the hearing and stated that he was now seeking a total award for rent in the amount of \$4190.00.

Issue 1: Rent - \$4190.00

Issue 2: Late Fees - \$525.00

Relevant Submissions

8. The landlord stated that he had entered into a verbal rental agreement with the tenant in 2015. The monthly rent was set at \$895.00 and the landlord stated that the tenant had paid a security deposit of \$670.00. The landlord also testified that on 01 November 2021 he had increased the rent to \$1195.00 per month.
9. The landlord testified that the tenant moved in mid-June 2022.
10. With his application, the landlord submitted a copy of his rent records showing the payments the tenant had made since January 2018. According to these records, the tenant had a balance owing of \$250.00 at the beginning of that month, and the landlord only received an \$850.00 payment towards January's rent, leaving him with a balance of \$295.00 for the period ending 31 January 2018.
11. \$710.00 was paid towards February's rent and \$1050.00 was received in March 2018. According to these records, the landlord then assessed late fees at the end of March 2018, and even though the tenant was making regular monthly payments, sometimes in excess of the required rent, the landlord continued to charge late fees each month, and in most cases, the assessed fee was \$75.00.
12. The records also show that at the end of October 2021, the tenant had a zero balance, and the landlord assessed another late fee in that month. When the rent increase came into effect on 01 November 2021, the records show that for the next 5 months, the landlord was only receiving rent payments of \$895.00. As such, the landlord charged a \$75.00 late fee for each of those months, leaving the tenant with a balance of \$1875.00 for the period ending 31 March 2022.
13. A payment of \$780.00 is recorded in the ledger for April 2022 and the landlord testified that the tenant paid \$600.00 on 12 May 2022. No rent was paid for June 2022, and the landlord assessed 3 more late fees of \$75.00 for April, May and June 2022.

14. According to the landlord's records, and based on his calculations, the tenant owes him \$4190.00 for the period ending 30 June 2022. In addition to this \$4190.00, the landlord is also seeking \$525.00 in late fees.

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. I pointed out to the landlord that late fees are capped at \$75.00 and they cannot be assessed again until such time as that fee and any outstanding rent is paid by the tenant. A \$75.00 late fee cannot be assessed each month while a tenant remains in arrears. When I pointed this out to the landlord at the hearing, he informed me that he would correct his records and he would send in those corrected records after the hearing concluded. The landlord did not send in those corrected records, as promised.
17. On review of the submitted records, and including the assessments in May and June 2022, I calculate that over the last 4 years, the landlord has charged the tenant \$2509.00 in late fees. As they were not properly assessed, in the manner prescribed by the minister, I remove that amount from the landlord's claim, and I find that he is entitled to an award of \$1681.00 in rent (\$4190.00 - \$2509.00).

Decision

18. The landlord's claim for a payment of rent succeeds in the amount of \$1681.00

Issue 3: Security Deposit

19. The landlord stated that the tenant had paid a security deposit of \$670.00 in 2014 before he moved into the property. As the landlord's claim for rent has succeeded, he shall retain that deposit as outlined in this decision and attached order.

Summary of Decision

20. The landlord is entitled to a payment of \$1011.00, determined as follows:

- a) Rent Owing\$1681.00
- b) LESS: Security Deposit.....(\$670.00)
- c) Total Owing to Landlord\$1011.00

21 October 2022

Date

[Redacted]
John R. Cook
Residential Tenancies Tribunal