

Residential Tenancies Tribunal

Application 2022 No. 574NL

Decision 22-0574-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:17 AM on 25 August 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 vacant possession of the rented premises;
 - An order for a payment of rent in the amount of \$2600.00; and
 - An order for a payment of late fees in the amount of \$75.00.

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 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 her application stating that she sent the application and notice of the hearing to the tenants, by e-mail, on 12 August 2022, and a copy of that e-mail was submitted at the hearing. 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 no longer seeking an order for vacant possession as the tenants vacated on 13 August 2022. The landlord also amended her claim for rent and stated that she was now seeking a total of \$5330.00.

Issue 1: Rent - \$5330.00

Relevant Submissions

8. The landlord stated that she had entered into a rental agreement with the tenants in September 2018. The agreed rent was set at \$1500.00 per month, and this included the electrical and Wi-Fi utilities. No security deposit was paid.
9. On 12 July 2022, the landlord issued the tenants a termination notice, and a copy of that notice was submitted with her application. That notice 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 23 July 2022. The landlord stated that the tenants vacated on 13 August 2022.
10. With her application, the landlord submitted rent records showing the payments she had received from the tenants since January 2022. At the hearing she testified that the tenants had a zero-balance for the period ending 31 December 2021. Her records show that the tenants paid \$1320.00 during the month of January 2022, leaving them with a balance of \$220.00. The landlord stated at the hearing that the balance owing was actually \$1710.00, but she corrected that testimony when I pointed out to her that \$1500.00 minus \$1320.00 equals \$180.00.
11. The landlord stated that the tenants only paid her \$1000.00 during February 2022, but she corrected that testimony when I pointed out to her that her records show that the tenants paid a total of \$1650.00 during that month. Her records also show that the tenants paid a total of \$1450.00 for March 2022.
12. The landlord then stated that the tenants only paid her \$1000.00 on 22 January 2022, that she received \$200.00 on 04 February 2022, and that they paid the full rent for March 2022. She acknowledged that that testimony did not align with her submitted records or her earlier testimony.

13. The landlord's records show that \$950.00 was paid in April 2022, and \$1100.00 was paid in May 2022. Although it is not recorded on her ledger, the landlord also testified that the tenants paid her a total of \$1100.00 in June 2022, and then another \$200.00 in July 2022. The landlord stated that no rent was paid for August 2022.
14. She also stated the following at the hearing: \$1530.00 was owing for the period ending 31 December 2021; she claimed that the tenants had a balance owing of \$2360.00 for the period ending 30 June 2022; the landlord also stated that in May 2022 the tenants made 2 payments of \$5100.00 and \$950.00.
15. In summary, the landlord calculated that in 2022 she had only received \$6670.00 from the tenants, while they should have paid \$12,000.00 (8 months x \$1500.00 per month), leaving a balance of \$5330.00. She also stated that because there is a month "that she didn't add in", this final balance would probably be higher than the calculated \$3700.00.

Analysis

16. I found the landlord's presentation confusing, and some of it was inconsistent with the records she had submitted with her application. Putting the pieces together, I find the following to be probable:
17. The tenants owe no rent prior to 01 January 2022. No records were presented to show what payments were made in 2021, and I believe the landlord was confusing the balance owing at the end of December 2021 with the amount owing at the beginning of January 2022, when the rent for that month was charged.
18. Going by her records, I find that the tenants had paid \$1320.00 in January 2022, \$1650.00 in February 2022, \$1450.00 in March 2022, \$950.00 in April 2022, and \$1100.00 in May 2022. The landlord testified that the tenants had paid another \$1100.00 in June and \$200.00 in July 2022, and I accept those claims.
19. I calculate, then, that the tenants owe \$4300.00 (\$12,000.00 owing for the period ending 31 August 2022, less to the total payments of \$7700.00, tabulated from paragraph 18).

Decision

20. The landlord's claim for a payment of rent succeeds in the amount of \$4300.00.

Issue 2: Late Fees - \$75.00

21. The landlord has assessed a \$75.00 late fee.

Analysis

22. 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.*

23. As the tenants has been in rental arrears since 02 January 2022, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

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

Summary of Decision

25. The landlord is entitled to a payment of \$4375.00, determined as follows:

- a) Rent Owing \$4300.00
- b) Late Fees \$75.00
- c) Total Owing to Landlord **\$4375.00**

24 November 2022

Date

John R. Cook
Residential Tenancies Tribunal