

Residential Tenancies Tribunal

Application 2022-0843-NL

Decision 22-0843-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 2:16 p.m. on 01-November-2022.
2. The applicant, [REDACTED] hereinafter referred to as "the landlord" attended by teleconference.
3. The respondents, [REDACTED] and [REDACTED] hereinafter referred to as "tenant1 and tenant2" did not attend.

Preliminary Matters

4. The tenants were not present or represented at the hearing; I was able to reach tenant2 by telephone at the start of the hearing, however, he said he was unable to attend. 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 (LL#01) with his application stating that he had served both tenants with notice of the hearing, by email, on 17-October-2022, and a copy of that email was also submitted with his application. The landlord sent the documents to both of the respondents to the email provided on the rent ledger, [REDACTED]. 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.
5. The landlord amended his application, he no longer requires premises vacated as the tenants have already moved and the landlord has regained possession of the property. He also amended the amount of rent owed from \$3,864.00 to \$4,032.21 to reflect the current amount owed.

Issues before the Tribunal

6. The landlord is seeking:
- Rent \$4,032.21
 - Late fees \$75.00
 - Hearing expenses reimbursed \$20.00

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
8. Also relevant and considered in this decision is the following section of the *Residential Tenancies Act, 2018*: Section 15: Fee for failure to pay rent.

Issue 1: Rent Owing

Relevant Submissions:

9. The landlord submitted a rental agreement (LL#03) the tenants had agreed to a term agreement from 01-December-2021 until 30-November-2022. The landlord said that the tenants had requested that rent of \$785.00 be paid every 2nd Friday commencing 03-December-2022. The rent included heat, lights and internet. The tenants paid a security deposit of \$1,250.00 on 19-November-2021; the landlord is still in possession of that deposit.
10. The landlord had served the tenants with a termination notice for failure to pay rent (LL#02). The notice had a termination date of 15-September-2022. He said that the tenants abandoned the property and he posted an abandonment notice with a deadline of 26-September-2022. He never received a response and took back possession on the 27-September-2022. He said that because the notice is dated for 26-September-2022, he stopped applying rent after that date.
11. The landlord said that there were issues with rent payments from the start. He provided the following rent ledger (LL#04)

Rent ledger
2022-0843-NL

Date	Action	Amount	total
3-Dec-21	rent due	785.00	785.00
3-Dec-21	payment	-600.00	185.00
4-Dec-21	payment	-200.00	-15.00
4-Dec-21	agreed late fees for inconvenience	15.00	0.00
17-Dec-21	rent due	785.00	785.00
17-Dec-21	payment	-250.00	535.00
22-Dec-21	payment	-535.00	0.00
22-Dec-21	no late fees charged	0.00	0.00
31-Dec-21	rent due	785.00	785.00
5-Jan-22	payment	-300.00	485.00

14-Jan-22		payment	-800.00	-315.00
14-Jan-22	rent due		785.00	470.00
14-Jan-22		late fees from 31-Dec-21	31.00	501.00
20-Jan-22		late fees from 14-Jan-22	15.00	516.00
20-Jan-22		payment	-1000.00	-484.00
28-Jan-22	rent due		785.00	301.00
28-Jan-22		payment	-301.00	0.00
11-Feb-22	rent due		785.00	785.00
11-Feb-22		payment	-500.00	285.00
19-Feb-22		payment	-320.00	-35.00
19-Feb-22		late fees from 11-Feb-22	19.00	-16.00
25-Feb-22	rent due		785.00	769.00
25-Feb-22		payment	-600.00	169.00
10-Mar-22		payment	-1035.00	-866.00
10-Mar-22		late fees from 25-Feb-22	29.00	-837.00
11-Mar-22	rent due		785.00	-52.00
25-Mar-22	rent due		785.00	733.00
25-Mar-22		payment	-600.00	133.00
8-Apr-22	rent due		785.00	918.00
8-Apr-22		payment	-600.00	318.00
8-Apr-22		late fees from 25-Mar-22	31.00	349.00
20-Apr-22		payment	-440.00	-91.00
20-Apr-22		late fees from 08-Apr-22	27.00	-64.00
22-Apr-22	rent due		785.00	721.00
22-Apr-22		payment	-785.00	-64.00
6-May-22	rent due		785.00	721.00
6-May-22		payment	-600.00	121.00
20-May-22	rent due		785.00	906.00
23-May-22		payment	-150.00	756.00
23-May-22		late fees from 6-May-22	37.00	793.00
24-May-22		payment	-300.00	493.00
3-Jun-22	rent due		785.00	1278.00
3-Jun-22		payment	-525.00	753.00
3-Jun-22		late fees from 20-May-22	31.00	784.00
17-Jun-22	rent due		785.00	1569.00
17-Jun-22		payment	-500.00	1069.00
30-Jun-22		payment	-500.00	569.00
1-Jul-22	rent due		785.00	1354.00
5-Jul-22		payment	-200.00	1154.00
15-Jul-22	rent due		785.00	1939.00
20-Jul-22		payment	-1500.00	439.00
29-Jul-22	rent due		785.00	1224.00
29-Jul-22		payment	-400.00	824.00
12-Aug-22	rent due		785.00	1609.00
26-Aug-22	rent due		785.00	2394.00
26-Aug-22		payment	-100.00	2294.00
9-Sep-22	rent due		785.00	3079.00
23-Sep-22	rent due		785.00	3864.00

Daily rate

\$785.00 x 26 weeks = \$20,410.00 a year

\$20,410.00 divided by 365 days = \$55.92

\$55.92 x 3 days = 167.76

12. The landlord said that the first rent payment was late by a day and tenant1 gave him an extra \$15.00 for his inconvenience. He said he never charged late fees the next rent payment date, but as of the third late payment he starts applying late rent fees whenever rent is not paid in full.
13. The landlord is seeking full reimbursement for rent owed \$4,032.21

Analysis

14. Non-payment of rent is a violation of the rental agreement. The landlord has included his charges for late fees and once applied, the late fee charges are also considered rent owed. 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.*

15. Once a tenant is in arrears late fees can be applied as shown in paragraph 14. However, the maximum rate is \$75.00, once that rate has been reached no further charges are applied. That being said, if a tenant pays rent in full and is no longer in rental arrears and then in a following month or months falls into arrears again, the calculation starts again.
16. As shown in the landlord's ledger, the landlord starts the calculation for late fees each time a rent payment is due, sometimes the rent is still in arrears, and therefore the late fee should continue at a rate of \$2.00 a day not start fresh with \$5.00 and then \$2.00 each day. When the tenants come out of arrears and then fall back into arrears, the landlord is also applying late fees for the day the rent is due, when in fact the rent is not in arrears until the following day; the following day would be considered the first day the rent is in arrears. In addition to this, often times rent is applied on a day that a payment came in, after the payment, this gives a false read of the tenants being paid in full, see the line for 14-January-22, as an example of this in the table from paragraph 11. This

false read could indicate that the calculation for late fees is to begin again, which is incorrect.

17. The landlord had said that the tenants gave him \$15.00 extra for his inconvenience when the first payment is late, he also said that he didn't charge late fees when the second payment was late. I find that the gift to him of \$15.00 for inconvenience will not be considered an applied charge of late fees, as the landlord did not charge this rate, the tenants told him this was for his inconvenience for having to wait a day for the second half of the payment. There is also no requirement for a landlord to apply late fees, so his decision not to charge late fees on the second late payment is his choice and late fees will not be applied for that time.
18. A revised ledger is below, late fees are applied below in accordance with the formula prescribed by the minister.

Rent ledger
2022-0843-NL

Date	Action	Amount	total
3-Dec-21	rent due	785.00	785.00
3-Dec-21	payment	-600.00	185.00
4-Dec-21	payment	-200.00	-15.00
4-Dec-21	agreed late fees for inconvenience	15.00	0.00
17-Dec-21	rent due	785.00	785.00
17-Dec-21	payment	-250.00	535.00
22-Dec-21	payment	-535.00	0.00
22-Dec-21	no late fees charged	0.00	0.00
31-Dec-21	rent due	785.00	785.00
5-Jan-22	payment	-300.00	485.00
14-Jan-22	rent due	785.00	1270.00
14-Jan-22	payment	-800.00	470.00
14-Jan-22	late fees from 01-21 Jan = \$5 + 20 days at \$2 = \$45	45.00	515.00
22-Jan-22	payment	-1000.00	-485.00
28-Jan-22	rent due	785.00	300.00
28-Jan-22	payment	-301.00	-1.00
11-Feb-22	rent due	785.00	784.00
11-Feb-22	payment	-500.00	284.00
19-Feb-22	payment	-320.00	-36.00
19-Feb-22	late fees from 12-18 Feb = \$5 = 6 days at \$2 = \$17	17.00	-19.00
25-Feb-22	rent due	785.00	766.00
25-Feb-22	payment	-600.00	166.00
10-Mar-22	payment	-1035.00	-869.00
10-Mar-22	late fees from 26 Feb - 9 Mar = \$5 + 11 days at \$2	27.00	-842.00
11-Mar-22	rent due	785.00	-57.00
25-Mar-22	rent due	785.00	728.00
25-Mar-22	payment	-600.00	128.00
8-Apr-22	rent due	785.00	913.00
8-Apr-22	payment	-600.00	313.00

late fees from 26 Mar-19 Apr = \$5 + 24 days at \$2			
= \$53			
19-Apr-22		53.00	366.00
20-Apr-22	payment	-440.00	-74.00
22-Apr-22	rent due	785.00	711.00
22-Apr-22	payment	-785.00	-74.00
6-May-22	rent due	785.00	711.00
6-May-22	payment	-600.00	111.00
20-May-22	rent due	785.00	896.00
23-May-22	payment	-150.00	746.00
24-May-22	payment	-300.00	446.00
3-Jun-22	rent due	785.00	1231.00
3-Jun-22	payment	-525.00	706.00
17-Jun-22	rent due	785.00	1491.00
17-Jun-22	payment	-500.00	991.00
30-Jun-22	payment	-500.00	491.00
1-Jul-22	rent due	785.00	1276.00
5-Jul-22	payment	-200.00	1076.00
15-Jul-22	rent due	785.00	1861.00
20-Jul-22	payment	-1500.00	361.00
29-Jul-22	rent due	785.00	1146.00
29-Jul-22	payment	-400.00	746.00
12-Aug-22	rent due	785.00	1531.00
26-Aug-22	rent due	785.00	2316.00
26-Aug-22	payment	-100.00	2216.00
9-Sep-22	rent due	785.00	3001.00
23-Sep-22	rent due	785.00	3786.00
26-Sep-22	move out date - daily rate	168.21	3954.21

Daily rate

\$785.00 x 26 weeks = \$20,410.00 a year

\$20,410.00 divided by 365 days = \$55.92

\$55.92 x 3 days = 167.76

19. I accept the landlord's testimony and evidence that the tenants' payments were made as shown in the table in paragraph 11 and I find that with the revisions to the late fees to follow the calculations prescribed by the minister, as shown in paragraph 18, the tenants owe the landlord \$3,954.21 in rent.

Decision

20. The tenants shall pay to the landlord \$3,954.21 in rent.

Issue 2: Late fees \$75.00

Relevant Submissions

21. The landlord has shown, as per the tables in paragraphs 11 & 18 that the tenants did not make a full payment for rent on 06-May-2022 and have been in rental arrears as of 07-May-2022. The landlord is seeking the maximum allowed late fees for the period of 06-May-2022 until the day of the hearing.

Analysis

22. As shown in paragraph 14, Section 15 of the *Residential Tenancies Act, 2018* calculates the rate of late fees to a maximum of \$75.00.
23. As the tenants have been in arrears since 07-May-2022, I find that 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 succeeds in the amount of \$75.00.

Issue 3: Hearing expenses reimbursed \$20.00

25. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#05) and pursuant to policy 12.01, as the claim has been successful, is entitled to reimbursement of that cost from the tenants.

Summary of Decision

26. The tenants shall:
- Pay the landlord \$4,049.21 as follows:
 - Rent \$3,954.21
 - Late fees 75.00
 - Hearing expenses 20.00
 - Total \$4,049.21

04-November-2022

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office