

Residential Tenancies Tribunal

Application 2022 No. 982NL

Decision 22-0982-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 2:17 PM on 13 December 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 vacant possession of the rented premises;
 - An order for a payment of rent in the amount of \$2000.00;
 - An order for a payment of late fees; and
 - Authorization to retain the \$600.00 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 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 his application stating that she sent the application and notice of the hearing to the tenant, by text-message, on 09 November 2022, and a copy of that exchange was submitted with his application. 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 no longer seeking an order for vacant possession as the tenant moved out on 12 December 2022. He also stated that he was now seeking an order for a payment of \$3200.00 in rent.

Issue 1: Rent - \$3200.00

Relevant Submissions

8. The landlord stated that she had entered into a verbal rental agreement with the tenant on 04 July 2022. The agreed rent was set at \$1200.00 per month, and the landlord stated that the tenant had paid a security deposit of \$600.00.
9. The tenant fell into rental arrears in October 2022, and on 20 October 2022 the landlord issued him a termination notice, and a copy of that notice was submitted with his 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 31 October 2022. The landlord stated that the tenant did not vacate until 12 December 2022.
10. With his application the landlord submitted a rent ledger showing the payments he had received from the tenant since he moved in. According to that ledger, the tenant's rent was paid and up-to-date for the period ending 30 September 2022. However, since then, the tenant has only made 1 payment to the landlord—\$400.00 on 05 October 2022.
11. The landlord is seeking an order for a payment of the remaining \$800.00 for October 2022, as well as a payment of a full month's rent for each of November and December 2022, for a total claim of \$3200.00 (\$800.00 + \$1200.00 + \$1200.00).

Analysis

12. I accept the landlord's claim that the tenant has not been paying his rent, as required, and that the last payment the landlord received was \$400.00 towards October's rent, with no payments made towards rent for November or December 2022.

13. Policy with this Section is that a landlord can only be awarded rent up to the date of the hearing. Accordingly, I calculate that the landlord is entitled to a payment of \$2503.23 (\$800.00 owing for October 2022, \$1200.00 for November 2022, and \$503.23 for December 2022 (\$1200.00 x 13/31)).

Decision

14. The landlord's claim for a payment of rent succeeds in the amount of \$2503.23.

Issue 2: Late Fees - \$75.00

15. The landlord has assessed late fees.

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 rental arrears since 02 October 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 succeed in the amount of \$75.00.

Issue 3: Security Deposit

19. The landlord stated that the tenant had paid a security deposit of \$600.00 on 20 July 2022. As his claim has been successful, 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 \$1978.23, determined as follows:

a) Rent Owing	\$2503.23
b) Late Fees	\$75.00
c) LESS: Security Deposit	(\$600.00)
d) Total Owing to Landlord	<u>\$1978.23</u>

22 December 2022

Date


John R. Cook
Residential Tenancies Tribunal