

Residential Tenancies Tribunal

Application 2022 No. 1058NL

Decision 22-1058-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 2:00 PM on 23 January 2023 via teleconference.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as "landlord1" and "landlord2", 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 landlords are seeking the following:
 - An order for a payment of rent in the amount of \$2260.00,
 - An order for a payment of late fees in the amount of \$75.00,
 - An order for vacant possession of the rented premises, and
 - Authorization to retain the \$435.00 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 landlords submitted an affidavit with their application stating that the tenants were served with the application, by registered mail, and the associated tracking history shows that it was delivered on 22 December 2022. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlords, I proceeded with the hearing in their absence.

7. Landlord1 amended the application at the hearing and stated that they were now seeking a total of \$2625.00 in rent.

Issue 1: Rent - \$2625.00

Relevant Submissions

8. Landlord1 stated that she had entered into a monthly rental agreement with the tenants on 01 September 2018, and a copy of the executed rental agreement was submitted with their application. The agreed rent was set at \$875.00 per month and it is acknowledged in the submitted rental agreement that the tenants had paid a security deposit of \$435.00.
9. The landlords submitted rent records with their application showing the payments they had received from the tenants since July 2021. According to these records, the tenants' rent was paid and up-to-date for the period ending 31 October 2022, but since then, no payments have been made. The landlords are seeking an order for a payment of \$2625.00 for the months of November 2022, December 2022, and January 2023.

Analysis

10. I accept landlord1's claim that the tenants have not paid rent as required, and I agree with her that the tenants have paid no rent since October 2021. As the landlords are also seeking an order for vacant possession of the rented premises, I find that they are entitled to a payment of rent to the date of the hearing and a per diem thereafter.
11. I calculate the amount owing to be \$2411.71 (\$1750.00 for the period ending 31 December 2022 and \$661.71 for January 2023 (\$875.00 per month x 12 months = \$10500.00 per year ÷ 365 days = \$28.77 per day x 23 days)).

Decision

12. The landlords' claim for a payment of rent succeeds in the amount of \$2411.71.
13. The tenants shall pay a daily rate of rent in the amount of \$28.77, beginning 24 January 2023, and continuing to the date the landlords obtain vacant possession of the rented premises.

Issue 2: Late Fees - \$75.00

14. The landlords have assessed late fees in the amount of \$75.00.

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. As the tenants have been arrears since 02 November 2022, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 3: Vacant Possession of Rented Premises

Relevant Submissions

18. With their application, the landlords submitted a copy of a termination notice that they had issued to their tenants on 01 December 2022. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 12 December 2022.
19. Landlord1 stated that the tenants have not moved out, as required, and they are seeking an order for vacant possession of the rented premises

Analysis

20. 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.

21. On 01 December 2022, the day the notice was issued, the tenants were in arrears in the amount of \$875.00 and had been in arrears since the beginning of November 2022. No payments have been made since the termination notice was issued.
22. As the notice meets all the requirements set out in this section of the *Act*, and as it was properly served, it is valid.

Decision

23. The landlords' claim for an order for vacant possession of the rented premises succeeds.
24. The tenants shall pay to the landlords any costs charged to the landlords by the Office of the High Sheriff should the landlords be required to have the Sheriff enforce the attached Order of Possession.

Issue 4: Security Deposit

25. Landlord1 stated that the tenants had paid a security deposit of \$435.00 on 01 September 2018, and receipt of that deposit is acknowledged in the submitted rental agreement. As the landlords' claim has been successful, they shall retain that deposit as outlined in this decision and attached order.

Issue 5: Hearing Expenses

26. With their application, the landlords submitted a receipt for \$20.00 for the costs of filing this application, and another receipt showing that they had paid \$13.44 to serve the tenants by registered mail. As the landlords' claim has been successful, the tenants shall pay these hearing expenses.

Summary of Decision

27. The landlords are entitled to the following:
 - A payment of \$2085.15, determined as follows:

a) Rent Owning	\$2411.71
b) Late Fees	\$75.00
c) Hearing Expenses.....	\$33.44
d) LESS: Security Deposit.....	(\$435.00)
e) Total.....	<u>\$2085.15</u>
 - An order for vacant possession of the rented premises,
 - A payment of a daily rate of rent in the amount of \$28.77, beginning 24 January 2023 and continuing to the date the landlord obtains possession of the rental unit,

- The tenants shall also pay to the landlords 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.

26 January 2023

Date



John R. Cook
Residential Tenancies Tribunal