

Residential Tenancies Tribunal

Application 2022 No. 198NL

Decision 22-0198-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:15 AM on 26 May 2022 via teleconference.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED], hereinafter referred to as "the landlord".
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as "the tenants", did not participate.

Issues before the Tribunal

4. The landlord is seeking the following:
 - An order for a payment of rent in the amount of \$1285.00,
 - An order for a payment of late fees in the amount of \$75.00, and
 - An order for vacant possession of the rented premises.

Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
6. Also relevant and considered in this case is section 19 of the *Residential Tenancies Act, 2018* and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

7. 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 respondent's absence so long as they have been properly served. The landlord submitted an affidavit with her application stating that she had sent the application and notice of the hearing to the tenants, by registered mail, on 23 March 2022, and the tracking history shows that the tenants did not collect this mail. As subsection 42(6) of the *Act* considers materials served on the fifth day after mailing, the tenants were properly served. As any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.

8. The landlord amended her application at the hearing and stated that she was now seeking a total claim of rent in the amount of \$1370.00.

Issue 1: Rent - \$1370.00

Relevant Submissions

9. The landlord testified that she had had entered into a 1-year, fixed-term rental agreement with the tenant on 01 December 2021. The agreed rent was set at \$885.00 per month.
10. With her application, the landlord submitted a copy of her rent records showing the rent payments she had received from the tenants since they had moved into the unit (■ #1). According to these records, the tenants last had a zero-balance on 21 January 2022.
11. According to the landlord's records, the tenants have not successfully paid rent (e.g., in full each month on the day it is due) since they took occupancy of the rental unit. Furthermore, only partial payments have been received since March 2022, and according to the landlord's records, the tenants are now in arrears in the amount of \$1370.00.
12. The landlord is seeking an order for a payment of that amount.

Analysis

13. I accept the landlord's claim that the tenants have not paid their rent as required. These records show that the tenants owe \$885.00 for the period ending 30 April 2022 and that a payment of \$400.00 was received on 13 May 2022.
14. As the landlord is also seeking an order for vacant possession of the rented premises, I find that she is entitled to a payment of rent to the date of the hearing (26 May 2022) and a per diem thereafter.

15. I calculate the amount owing to be \$1,241.60 (\$885.00 owing for the period ending 30 April 2022 and \$356.60 for May 2022 (\$885.00 per month x 12 months = \$10,620.00 per year ÷ 365 days = \$29.10 per day x 26 days = \$756.60, less the payment of \$400.00 received on 13 May 2022)).

Decision

16. The landlord's claim for a payment of rent succeeds in the amount of \$1,241.60.
17. The tenant shall pay a daily rate of rent in the amount of \$29.10, beginning 27 May 2022, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Late Fees - \$75.00

18. The landlord has assessed late fees in the amount of \$75.00.

Analysis

19. 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.

20. As the tenant has been arrears since February 2022, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 3: Vacant Possession of Rented Premises

Relevant Submissions

22. With her application, the landlord submitted a copy of a termination notice (█ #2) which she stated that was posted to the tenants' door on 08 March 2022. That notice was issued under section 19 of the *Residential Tenancies Act, 2018*, and it had an effective termination date of 19 March 2022.
23. The landlord stated that the tenants have not moved out, as required, and she is seeking an order for vacant possession of the rented premises

Analysis

24. 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.

25. According to the landlord's records, on 8 March 2022, the day the termination notice was issued, the tenants were in arrears in the amount of \$1285.00, and had been in arrears since the beginning of February 2022. Although the tenants did make a payment of \$400.00 on 14 March 2022, that only reduced the amount owing to \$885.00.

26. As the notice meets all the requirements set out in this section of the *Act*, and as it was properly served, it is a valid notice

Decision

27. The landlord's claim for an order for vacant possession of the rented premises succeeds.
28. The tenants shall pay to the landlord 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.

Issue 4: Hearing Expenses

29. The landlord paid a fee of \$20.00 to file this application. As her claim has been successful, the tenants shall pay this hearing expense.

Issue 5: Security Deposit

30. The landlord stated that the tenants had paid a security deposit of \$663.75 on 19 November 2021. As the landlord's claim has been successful, she shall retain that deposit as outlined in this decision and attached order.

Summary of Decision

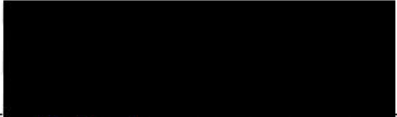
31. The landlord is entitled to the following:
- A payment of \$1,336.00, determined as follows:

a) Rent Owing	\$1,241.60
b) Late Fees	\$75.00
c) Hearing Expenses.....	\$20.00
d) LESS: Security Deposit.....	(\$663.75)
e) Total.....	<u>\$672.85</u>
 - An order for vacant possession of the rented premises,
 - A payment of a daily rate of rent in the amount of **\$29.10**, beginning 27 May 2022 and continuing to the date the landlord obtains possession of the rental unit,

- The tenant shall also pay to the landlord 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.

03 June 2022

Date



John R. Cook
Residential Tenancies Tribunal