

Residential Tenancies Tribunal

Application 2023 No. 97NL

Decision 23-0097-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 2:01 PM on 28 February 2023 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", was represented at the hearing by [REDACTED] ("[REDACTED]"). 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 a payment of rent in the amount of \$8100.00;
 - 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 \$1350.00 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 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 affidavits with her application stating that she had sent the application and notice of the hearing to the tenants, by e-mail, on 10 February 2023, and a copies of those e-mails were also submitted. 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. █ amended the application and stated that she was no longer seeking an order for vacant possession as the tenants moved out on 31 January 2023.

Issue 1: Rent - \$8100.00

Relevant Submissions

8. █ stated that the landlord and the tenants had entered into 1-year, fixed-term rental agreement, commencing 15 February 2022, and a copy of the executed lease was submitted with the landlord's application. The agreed rent was set at \$1800.00 per month, due on 15th day of each month. █ also stated that the tenants had paid a security deposit of \$1350.00 on 27 January 2022.
9. The tenants fell into rental arrears shortly after they had moved in, and those arrears had been accumulating since September 2022. On 18 January 2023, 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 31 January 2023. The tenants moved on that date.
10. With her application, the landlord had submitted a copy of the rent ledger showing the payments the tenants had made since they moved into the unit. According to these records, the tenants last had a zero balance on 14 April 2022, and since then, rent was rarely paid on time, and was oftentimes only partially paid.
11. On 14 August 2023, the ledger shows that the tenants had a balance of \$900.00, and since then, the tenants only made 4 more rent payments, each of \$900.00. According to the ledger, the tenants' final balance is \$8100.00 for the period ending 14 February 2023. The landlord is seeking an order for a payment of that amount.

Analysis

12. I accept the testimony of █ in this matter and I agree with her that the tenants have not been paying their rent, as required.
13. The ledger submitted by the landlord shows that the tenants have been carrying areas since April 2022, and those arrears have been steadily accumulating. Based on that ledger, I find that the tenants owe the landlord \$8100.00 for the rental period ending 14 February 2023.

Decision

14. The landlord's claim for a payment of rent succeeds in the amount of \$8100.00.

Issue 2: Late Fees - \$75.00

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

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 tenants have been in rental arrears since 16 April 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: Hearing Expenses

19. The landlord paid a fee of \$20.00 to file this application. As the landlord's claim has been successful, the tenants shall pay this hearing expenses.

Issue 4: Security Deposit

20. █ stated that the tenants had paid a security deposit of \$1350.00 on 27 January 2022, and a receipt for that deposit was also submitted with the landlord's application. As the landlord's claim has been successful, the landlord shall retain that deposit as outlined in this decision and attached order.

Summary of Decision

21. The landlord is entitled to a payment of \$6845.00, determined as follows:

a) Rent Owing	\$8100.00
b) Late Fees.....	\$75.00
c) Hearing Expenses	\$20.00
d) LESS: Security Deposit..... (\$1350.00)	
e) Total Owing to Landlord.....	<u>\$6845.00</u>

22 March 2023

Date

John R. Cook
Residential Tenancies Tribunal