

Residential Tenancies Tribunal

Application 2023 No. 150NL

Decision 23-0150-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 2:02 PM on 21 March 2023 via teleconference.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED] [REDACTED], hereinafter referred to as "the landlord". 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 payment of rent in the amount of \$4645.00
 - 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

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 tenant was not present or represented at the hearing and I was unable to reach him by telephone at the commencement of the hearing. 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 the 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 the tenant was served with the application, by registered mail, and the associated tracking history shows that it was sent out on 21 February 2023, but was not collected by the tenant. Section 42.(6) of the *Residential Tenancies Act, 2018* states that where an application is sent by registered mail, it is considered to have been served on the fifth day after mailing—in this case, on 26 February 2023. 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, as of 20 March 2023, the tenant owed him \$6245.00 in rent.

Issue 1: Rent Owing - \$6245.00

Relevant Submissions

8. The landlord stated that he had entered into a 1-year, fixed-term lease with the tenant on 01 July 2017. The agreed rent at that time was set at \$995.00 per month, and on 01 October 2022, that rent was increased to \$1595.00 per month. The landlord also testified that the tenant had paid a security deposit of \$745.00 before he moved into the unit.
9. With his application, the landlord submitted a copy of his rent records showing the payments he had received from the tenant since he moved into the unit. These records show that between 2017 and February 2021, the tenant's rent was always paid on time, and he had a zero balance at the end of that period.
10. In March 2021, the tenant fell into arrears, and these arrears ballooned to over \$3500.00 in March 2022, but were finally paid off in August of that year. Since November 2022, however, the landlord has only received 1 payment from the tenant—\$1500.00 in January 2023, leaving him with a balance of \$3050.00 at the end of that month. No payments were made for February or March 2023, and the landlord calculates that the tenant owes him \$6245.00 as of 20 March 2023. He is seeking an order for a payment of that amount.

Analysis

11. I accept the testimony and evidence of the landlord in this matter, and based on the submitted records, I find that the tenant had been carrying rental arrears since November 2022, which have accumulated to \$4645.00 for the period ending 28 February 2023.

12. As the landlord is also seeking an order for vacant possession of the rented premises, I find that he is entitled to a payment of rent to the date of the hearing and a per diem thereafter. I calculate the amount owing to be \$5798.68 (\$4645.00 owing for the rental period ending 28 February 2023 and \$1153.68 owing for March 2023 (\$1595.00 per month x 12 months = \$19,140.00 per year ÷ 365 days = \$52.44 per day x 22 days)).

Decision

13. The landlord's claim for a payment of rent succeeds in the amount of \$5798.68.
14. The tenant shall pay a daily rate of rent in the amount of \$52.44, beginning 23 March 2023, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Late Fees - \$75.00

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

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 arrears since at least November 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 succeeds in the amount of \$75.00.

Issue 3: Vacant Possession of Rented Premises

Relevant Submissions

19. With his application, the landlord submitted a copy of a termination notice which he stated he had personally delivered to the tenant on 04 January 2023. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 16 January 2023.
20. The landlord stated that the tenant has not moved out, as required, and he is seeking an order for vacant possession of the rented premises.

Analysis

21. 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.

22. According to the landlord's records, on 04 January 2023, the day the termination notice was issued, the tenant was in arrears in the amount of \$3050.00, and had been in arrears since November 2022. No payments have been made by the tenant since that notice was issued and since then, the rent for February and March 2023 has also come due.

23. 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

24. The landlord's claim for an order for vacant possession of the rented premises succeeds.

25. The tenant 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: Security Deposit

26. The landlord stated that the tenant had paid a security deposit of \$745.00 in June 2017, before moving into the unit. As the landlord's claim has been successful, he shall retain that deposit as outlined in this decision and attached order.

Issue 5: Hearing Expenses

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

Summary of Decision

28. The landlord is entitled to the following:

- A payment of \$2568.94, determined as follows:

a) Rent Owing	\$5798.68
b) Late Fees	\$75.00
c) Hearing Expenses.....	\$20.00
d) LESS: Security Deposit..... (\$745.00)	
e) Total.....	<u>\$5148.68</u>
- An order for vacant possession of the rented premises,
- A payment of a daily rate of rent in the amount of \$52.44, beginning 23 March 2023 and continuing to the date the landlord obtains vacant 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.

27 March 2023

Date

John R. Cook
Residential Tenancies Tribunal