

## **Residential Tenancies Tribunal**

Application 2023 No. 522NL

Decision 23-0522-00

John R. Cook  
Adjudicator

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### **Introduction**

1. The hearing was called at 9:16 AM on 12 July 2023 via teleconference.
2. The applicant, [REDACTED] was represented at the hearing by [REDACTED] hereinafter referred to as "the landlord". The respondents, [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 payment of rent in the amount of \$1005.00,
  - An order for a payment of late fees in the amount of \$75.00,
  - An order for a payment of \$100.00 in fees for "non-sufficient funds", 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, 19 and 42 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. I was able to reach them by telephone at the commencement of the hearing, but they hung up. 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 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 landlord submitted an affidavit with her application stating that she had sent the application to tenants, by registered mail, on 22 June 2023. Although the associated tracking history shows that that mail was not collected by the tenants, according to section 42.(6) of the *Residential Tenancies Act, 2018*, it is nevertheless considered to have been served on the 5<sup>th</sup> day after mailing—in this case, 27 June 2023. 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. The landlord made 3 amendments to her application at the hearing. She stated that she was now only seeking \$574.00 in rent, \$14.00 for late fees, and \$50.00 for NSF fees.

#### **Issue 1: Rent Owing - \$574.00**

#### **Relevant Submissions**

8. The landlord stated that the tenants moved into the rental unit approximately 5 years ago. In January 2023, that property was sold, and her company was hired to manage that property, commencing 06 January 2023. The current rent is set at \$1000.00 per month.
9. With her application, the landlord submitted a copy of her rent records showing the payments she had received from the tenants since March 2023. For the 5 months between March and July 2023, the tenants made the following total payments: \$1015.00 was paid in the month of March 2023, \$1000.00 in April 2023, no payments were made in May 2023, \$2030.00 was paid in June 2023, and another \$560.00 was paid during July 2023.
10. Late fees and NSF fees were also charged during that 5 month period, and the landlord stated that some of the payments listed in the previous paragraph were applied towards those fees. She calculates that the tenant owes her a total of \$574.00, and that additional late fees and NSF fees are now owing for July 2023.

#### **Analysis**

11. With respect to the late fees and the NSF fees, I address those items in the next section.
12. By my reckoning, the tenants paid a total of \$4605.00 between March and July 2023, while they were charged \$5000.00 in rent for that 5 month period, leaving a

balance of \$395.00. But 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 and a per diem thereafter. I calculate that the tenants have a rent credit of \$35.44cr up to 12 July 2023, the date of the hearing, (\$130.00 owing for the period ending 30 June 2023, less the credit of \$165.44cr for July 2023 (\$1000.00 per month x 12 months = \$12,000.00 per year ÷ 365 days = \$32.88 per day x 12 days, less the payments totalling \$560.00 made during this month)).

## Decision

13. As of 12 July 2023, the tenants have a negative balance of \$35.44cr.
14. The tenants shall pay a daily rate of rent in the amount of \$32.88, beginning 13 July 2023, and continuing to the date the landlord obtains vacant possession of the rented premises.

**Issue 2: Late Fees - \$14.00**

**Issue 3: NSF Fees - \$50.00**

## 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.***

***(2) Where a cheque for the payment of rent is returned to a landlord by a financial institution because of insufficient funds, the landlord may charge the tenant a fee in the same amount as the fee charged to the landlord by the financial institution.***

16. Regarding the late fees, 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. According to the landlord's records, her attempt to carry out a pre-authorized debit withdrawal for the rent for March 2023 was denied for the reason of "non-sufficient funds" (NSF). She testified that the 3<sup>rd</sup> party payment platform utilized by her company, Telpay, charges \$50.00 for each NSF denial, as reflected in her rent records. Pre-authorized debits were denied for the same reason for the months of May and July 2023. Accordingly, I find that the landlord is entitled to NSF fees totalling \$150.00.
18. Because of the NSF charge for March 2023, the tenants have been carrying rental arrears from 02 March 2023 to the date of the hearing. The landlord stated that in May 2023 she assessed late fees, and I therefore find that she is also entitled to the maximum fee of \$75.00 set by the minister.

### **Decision**

19. The landlord's claim for NSF fees succeeds in the amount of \$150.00.
20. The landlord's claim for late fees succeeds in the amount of \$75.00.

### **Issue 4: Vacant Possession of Rented Premises**

#### **Relevant Submissions**

21. With her application, the landlord submitted a copy of a termination notice which she stated was personally delivered to the tenants on 25 May 2023. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 05 June 2023.
22. 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**

23. 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.*

24. According to the landlord's records, on 25 May 2023, the day the termination notice was issued, the tenants were in arrears in the amount of \$1160.00. After the notice was issued, rent for June 2023 also came due. Although some payments were made during the month of June 2023, none were received prior to the termination date set out in this notice.
25. 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**

26. The landlord's claim for an order for vacant possession of the rented premises succeeds.
27. 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 5: Hearing Expenses**

28. The landlord paid a fee of \$20.00 to file this application and she also submitted a receipt showing that she had paid \$14.88 to serve the tenants by registered mail. As the landlord's claim has been successful, the tenants shall pay these hearing expenses.

**Summary of Decision**

29. The landlord is entitled to the following:

- A payment of \$224.44, determined as follows:
  - a) NSF Fees.....\$150.00
  - b) Late Fees .....\$75.00
  - c) Hearing Expenses.....\$34.88
  - d) **LESS: Rent Credit..... (\$35.44)**
  - e) Total.....**\$224.44**
- An order for vacant possession of the rented premises,
- A payment of a daily rate of rent in the amount of \$32.88, beginning 13 July 2023 and continuing to the date the landlord obtains vacant possession of the rental unit,
- The tenants 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.

20 July 2023

Date

John R. Cook  
Residential Tenancies Tribunal