

Residential Tenancies Tribunal

Application 2023 No. 541NL

Decision 23-0541-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:15 AM on 18 July 2023 via teleconference.
2. The applicant, [REDACTED] [REDACTED] hereinafter referred to as "the landlord". The respondent, [REDACTED] [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 a payment of rent in the amount of \$1320.00,
 - 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, 19 and 42 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 her 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 she has been properly served. With her application, the landlord submitted an affidavit stating that she had sent the application to the tenant, by registered mail, on 22 June 2023. Although the associated tracking history shows that the tenant never did collect that mail, according to section 42.(6) of the *Residential Tenancies Act, 2018*, it is considered to have been served on the 5th day after mailing—in this case, 27 June 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 her absence.

7. The landlord amended her application at the hearing and stated that she was now seeking a total claim of rent in the amount of \$1723.00.

Issue 1: Rent - \$1723.00

Relevant Submissions

8. The landlord stated that she had entered into a rental agreement with the tenant on 01 July 2022. At that time, the rent was set at \$860.00 per month, and it has since increased, effective 01 July 2023, to \$878.00. The landlord also stated that the tenant had paid a security deposit of \$645.00 on 26 July 2022.
9. With her application, the landlord had submitted copy of her rent records showing the payments she had received from the tenant since the tenancy began. According to these records, the tenant last had a zero-balance on 27 April 2023. Since then, the tenant has only made 2 payments to the landlord—\$400.00 was paid on 05 June 2023, and a second payment of \$475.00 was received on 04 July 2023.
10. The landlord calculates that the tenant has an outstanding balance of \$1723.00 and she is seeking an order for a payment of that amount.

Analysis

11. I accept the testimony of the landlord in this matter and I find that the tenant had not been paying her rent as required and that she has accrued arrears totalling \$1723.00.
12. As the landlord is also seeking an order for vacant possession of the rented premises, I find that the landlord is entitled to a payment of rent to the date of the hearing, and a per diem thereafter.

13. I calculate that amount to be \$1364.66 (\$1320.00 owing for the period ending 30 June 2023 and \$44.66 for July 2023 (\$878.00 per month x 12 months = \$10,536.00 per year ÷ 365 days = \$28.87 per day x 18 days, less the payment of \$475.00 received on 04 July 2023)).

Decision

14. The landlord's claim for a payment of rent succeeds in the amount of \$1364.66.
15. The tenant shall pay a daily rate of rent in the amount of \$28.87, beginning 19 July 2023, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Late Fees - \$75.00

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

Analysis

17. 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.

18. As the tenant has been in arrears since 02 May 2023, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 3: Vacant Possession of Rented Premises

Relevant Submissions

20. With her application, the landlord submitted a copy of a termination notice that she stated was slipped under the tenant's door, by her resident manager, on 18 May 2023. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 29 May 2022.
21. The landlord stated that the tenant has not moved out, as required, and she is seeking an order for vacant possession of the rented premises.

Analysis

22. 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.

23. On 18 May 2023, the day the notice was issued, the tenant was in arrears in the amount of \$860.00, and she had been in arrears since the beginning of that month. No payments were made by the tenant prior to the termination date set out in that notice.

24. 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

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

26. 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: Hearing Expenses

27. The landlord submitted a receipt showing that she was charged \$14.88 to serve the tenant with the application by registered mail (\$3.19 + \$9.75 + tax), and a receipt for the \$20.00 application fee is also on file. As the landlord's claim has been successful, the tenant shall pay these hearing expenses.

Issue 5: Security Deposit

28. The landlord stated that the tenant had paid a security deposit of \$645.00 on 26 July 2022. As the landlord's application has been successful, she shall retain that deposit as outlined in this decision and attached order.

Summary of Decision

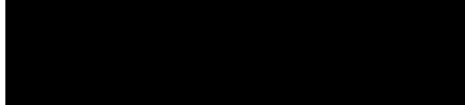
29. The landlord is entitled to the following:

- An order for a payment of \$829.54, determined as follows:
 - a) Rent Owing \$1364.66
 - b) Late Fees \$75.00
 - c) Hearing Expenses \$34.88
 - d) **LESS: Security Deposit..... (\$645.00)**
 - e) Total **\$829.54**
- An order for vacant possession of the rented premises,
- A payment of a daily rate of rent in the amount of \$28.87, beginning 19 July 2019 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.

19 July 2023

Date


John R. Cook
Residential Tenancies Tribunal