

Residential Tenancies Tribunal

Application 2023 No. 587NL

Decision 23-0587-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:16 AM on 07 September 2023 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", attended the hearing. 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 payment of rent in the amount of \$17,560.00,
 - 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 \$250.00 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, 19, and 35 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 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 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 his application stating he had sent the tenants the application, by registered mail, on 18 August 2023. Although the associated tracking history shows that the application was never collected by the tenants, section 42.(6) of the *Residential Tenancies Act, 2018* states that when an application is sent by registered mail, it is considered served on the fifth day after mailing—in this case, 23 August 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.

Issue 1: Rent Owing - \$17,560.00

Relevant Submissions

7. The landlord stated that he had entered into a 1-year, fixed-term rental agreement with the tenants on 25 July 2019, and a copy of the renewed lease, dated 01 August 2022, was submitted with his application. The current rent is set at \$900.00 per month, and the landlord testified that the tenants had paid a security deposit of \$250.00.
8. With his application, the landlord submitted a record of the payments the tenants had made since they had moved into the unit in 2019. According to these records, there were several months each year in which the tenants failed to pay their monthly rent. The landlord calculates that at the end of 2019, the tenants were in arrears in the amount of \$210.00. At the end of 2020 they owed a further \$4050.00; an additional \$3650.00 was owing for 2021; \$5000.00 was owing for 2022; and \$3900.00 was not paid for 2023, for the period ending 30 September 2023.
9. The landlord calculates that the tenants now owe a total of \$17,560.00, and he is seeking an order for a payment of that amount.

Analysis

10. I accept the testimony and evidence of the landlord in this matter, and I find that the tenants have not been paying their rent regularly since they moved into the unit.
11. On review of the landlord's records, I note that the tenants made a payment of \$1150.00 in July 2019, when they first moved in. That payment is \$250.00 more than the monthly rent of \$900.00, and I am going to assume that that extra \$250.00 was a payment of the security deposit, and is not rent. I also note that the landlord writes that the tenants had overpaid the rent by \$10.00 in August

2029, but the recorded payment is \$890.00, making it a \$10.00 underpayment. I calculate, then, that the tenants owe \$460.00 for 2019.

12. I also note another discrepancy—on the document titled “Rent_Owed_____”, no rent was recorded as being paid for December 2022, but on the document titled “Rent_Ledger_____”, it shows that the tenants had paid \$450.00 during that month. I conclude that the tenants owe \$4550.00, then, for 2022.
13. Based on my calculations, I find that the tenants owe the landlord \$16,610.00 for the period ending 30 September 2023 (\$460.00 for 2019, \$4050.00 for 2020, \$3650.00 for 2021, \$4550.00 for 2022, and \$3900.00 for 2023).

Decision

14. The landlord’s claim for a payment of rent succeeds in the amount of \$16,610.00 for the period ending 30 September 2023.

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 tenants have been in arrears since 2019, 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 sent to the tenants, by Facebook Messenger, on 09 June 2023. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 20 June 2023. The landlord also testified that he had sent this notice to the tenants on the following day, 10 June 2023, through regular mail.
20. The landlord stated that the tenants have 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. Based on my calculations, on 09 June 2023, the day the termination notice was issued, the tenants were in arrears in the amount of \$13,010.00, and they had been in arrears since 2019. The landlord received one payment from the tenants after the notice was issued—\$900.00 on 20 June 2023—but that payment only reduced the arrears to \$12,110.00. No payments have been made since.
23. Despite the fact that the landlord was in a position, on 09 June 2023, to terminate the rental agreement under this section of the Act, I find that the notice is not valid, as it does not meet the timeframe requirements set out in section 35, which states:

Service of documents

35. (2) A notice or other document under this Act other than an application under section 42 shall be served by a landlord on a tenant by

...

(f) sending it electronically where

(i) it is provided in the same or substantially the same form as the written notice or document,

(ii) the tenant has provided an electronic address for receipt of documents, and

(iii) it is sent to that electronic address

...

(6) For the purpose of this section, where a notice or document is sent electronically, it shall be considered to have been served on the day it is sent, if the document is sent by 4 p.m., or the next day that is not a Saturday or holiday, if the document is sent after 4 p.m.

24. The submitted termination notice is digitally signed by the landlord at 5:30 PM, and he testified that he had sent it to tenants at 5:39 PM. According to s. 35.(6) then, quoted above, as 09 June was a Friday and as the notice was sent after 4:00 PM, it is only considered to have been served on the tenants on Monday, 12 June 2023. But on 12 June 2023, the earliest termination date he could have specified in this notice was 23 June 2023, not 20 June 2023.

Decision

25. The termination notice which was served on the tenants on 12 June 2023 is not a valid notice.
26. The landlord's claim for an order for vacant possession of the rented premises does not succeed.

Issue 4: Security Deposit

27. The landlord stated that the tenants had paid a security deposit of \$250.00 on 25 July 2019, and through his application he seeking to have that amount applied towards the rent that is owing. As the landlord's claim for rent and late fees has succeeded, he shall retain that deposit as outlined in this decision and attached order.

Issue 5: Hearing Expenses

28. With his application, the landlord submitted a hearing expense claim form, and a receipt showing that he had paid \$20.00 to file this application, a receipt showing that he had paid \$10.00 to have his affidavit of service notarized, and a receipt showing that he paid \$29.75 to send the application to the tenants by registered mail. As the landlord's claim for rent and late fees has been successful, the tenant shall pay these hearing expenses.

Summary of Decision

29. The landlord is entitled to a payment of \$16,494.75, determined as follows:

- a) Rent Owing \$16,610.00
- b) Late Fees \$75.00
- c) Hearing Expenses \$59.75

- d) **LESS: Security Deposit (\$250.00)**

- e) Total **\$16,494.75**

30. The landlord's claim for an order for vacant possession of the rented premises does not succeed.

19 September 2023

Date

John R. Cook
Residential Tenancies Tribunal