

Residential Tenancies Tribunal

Application 2023 No. 680NL

Decision 23-0680-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 2:01 PM on 23 August 2023 via teleconference.
2. The applicant, [REDACTED], was represented at the hearing by [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 a payment of rent in the amount of \$1085.00,
 - 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. 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 he has been properly served. With her application, the landlord submitted an affidavit stating that she had sent the application to the tenant, by e-mail, on 11 August 2023, and a copy of that e-mail was also submitted with her application. 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 \$2170.00.

Issue 1: Rent - \$2170.00

Relevant Submissions

8. The landlord testified that [REDACTED] and [REDACTED] were in a 1-year, fixed-term lease which was set to expire on 31 May 2023. On 01 April 2023, that lease was assigned to the tenant, and a copy of a Leaseholder Amendment Agreement was submitted with her application showing the terms of that assignment. At that time, the agreed rent was set at \$910.00, and on 01 June 2022 it increased to \$935.00, as per a notice of increase given to [REDACTED] and [REDACTED] earlier in the tenancy, and, on 01 June 2023, it was increased once again to \$1085.00. The landlord also testified that she had retained the \$455.00 security deposit that [REDACTED] and [REDACTED] had paid to her when they moved in as security for this assigned tenancy. She stated that the tenant directly reimbursed [REDACTED] and [REDACTED] for that amount when the lease was assigned.
9. With her application, the landlord submitted a copy of her rent records showing the payments she had received from the tenant since he moved in. According to these records, the tenant had a zero-balance on 30 June 2023, but since then, no payments have been made by the tenant. The landlord is seeking an order for a payment of rent for the months of July and August 2023, totalling \$2170.00 (\$1085.00 per month x 2 months).

Analysis

10. I accept the testimony and evidence of the landlord in this matter and I find that the tenant had not paid his rent for the months of July and August 2023.

11. 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. I calculate that amount to be \$1905.41 (\$1085.00 owing for the period ending 31 July 2023 and \$820.41 for August 2023 (\$1085.00 per month x 12 months = \$13,020.00 per year ÷ 365 days = \$35.67 per day x 23 days)).

Decision

12. The landlord's claim for a payment of rent succeeds in the amount of \$1905.41.
13. The tenant shall pay a daily rate of rent in the amount of \$35.67, beginning 24 August 2023, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Late Fees - \$75.00

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

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.

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.

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

Decision

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

Issue 3: Vacant Possession of Rented Premises

Relevant Submissions

18. With her application, the landlord submitted a copy of a termination notice that she stated was posted to the tenant's door on 13 July 2023. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 25 July 2022.
19. 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

20. 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.

21. On 13 July 2023, the day the notice was issued, the tenant was in arrears in the amount of \$1085.00, and he had been in arrears since the beginning of that month. No payments were made by the tenant since that notice was issued, and since then rent for August 2023 has also come due.

22. 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

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

25. The landlord paid a fee of \$20.00 to file this application. As her claim has been successful, the tenant shall pay this hearing expense.

Issue 5: Security Deposit

26. The landlord testified that she is holding a \$455.00 deposit as security for this tenancy. As the landlord's application has been successful, she shall retain that deposit as outlined in this decision and attached order.

Summary of Decision

27. The landlord is entitled to the following:
- An order for a payment of \$1545.41, determined as follows:
 - a) Rent Owing\$1905.41
 - b) Late Fees\$75.00
 - c) Hearing Expenses.....\$20.00
 - d) **LESS: Security Deposit.....(\$455.00)**
 - e) Total.....\$1545.41
 - An order for vacant possession of the rented premises,
 - A payment of a daily rate of rent in the amount of \$35.67, beginning 24 August 2023, 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.

28 August 2023

Date


John R. Cook
Residential Tenancies Tribunal