

Residential Tenancies Tribunal

Applications: [REDACTED] Decision 23-0230-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:15 AM on 27 April 2023 via teleconference.
2. The applicant, Northview Fund, as represented by [REDACTED] hereinafter referred to as "the landlord", participated in the hearing. The respondents, [REDACTED] hereinafter referred to as "tenant1" and "tenant2", did not participate.
3. Two affidavits of service were provided by the landlord (L#1) confirming that the tenants were served notice of the claim by registered mail on 05 April 2023. A review of the tracking numbers provided with the affidavits indicates that both packages have since been returned to the landlord. Nevertheless, in accordance with 42(6) of the *Residential Tenancies Act* these items were considered served on the tenants as of 10 April 2023 allowing this hearing to proceed.
4. The details of the claim were presented as a currently month-to-month rental agreement that started November 2019. Current rent is set at \$1,075.00 a month due on the first, and a security deposit in the amount of \$455.00 was collected. A copy of the written rental agreement was provided (L# 2).
5. In a proceeding under the *Residential Tenancies Act*, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. The standard of proof, in these proceedings, is referred to as the balance of probabilities which means the applicants have to establish that their account of events is more likely than not to have happened.

Issues before the Tribunal

6. The landlord is seeking the following:
 - An order for rent to be paid in the amount of \$1075.00;
 - An order for late fees to be paid in the amount of \$19.00;
 - An order to retain the full value of the \$455.00 security deposit; and
 - An order for vacant possession of the rental premises.

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).
8. Also relevant and considered in this case is section 14, 15, and 19 of the *Act* and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

9. The tenants were not present or represented at the hearing and I was unable to reach them by [REDACTED] as the number was out of service. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*.
10. 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 they have been properly served.
11. As the tenants were properly served, and any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.
12. The landlord amended her application at the hearing and stated that she is seeking late fees in the amount of \$55.00 representing the amount currently owing.

Issue 1: Payment of Rent (\$1,075.00)

Relevant Submissions

13. The rental premises is a multi-unit apartment located at [REDACTED] [REDACTED] The tenants reside in suite 202. The landlord submitted a copy of their current rental ledger (L#3) and testified that the tenants owe \$1,130.00 in rent (including late fees) as at the day of the hearing.

Analysis

14. I accept the landlord's testimony and evidence and I find that the tenants have not yet paid rent for April 2023 (\$1,075.00) as of the day of the hearing. Because 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 (27 April 2023) and a per diem thereafter.
15. I therefore calculate the total arrears owing as at 27 April 2023 to be \$954.18. This amount was arrived at through the following calculations:
 - $\$1075.00 \times 12 = \$12,900.00 / 365 = \$35.34$ per day
 - $\$35.34 \times 27 = \954.18 for April 1 - 27, 2023

Decision

16. The landlord's claim for rent succeeds in the amount of \$954.18.
17. The landlord is entitled to an order for payment of a daily rate of rent in the amount of \$35.34, beginning 28 April 2023 and continuing to the date the landlord obtains possession of the rental unit.

Issue 2: Payment of Late Fees (\$55.00)

Relevant Submissions

18. The landlord has assessed late fees in the amount of \$55.00 because the tenant has not yet paid rent for April 2023.

Analysis

19. 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.

20. 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.

21. Because there have been arrears on the tenant's account since at least 02 April 2023, I find that the landlord is entitled to payment of \$55.00 as of 27 April 2023. The calculations are shown below:

Day 1 Late Rent = April 2 (\$5.00)
25 subsequent days late= \$2.00 x 25 (\$50.00)
Total late fees = \$55.00

Decision

22. The landlord's claim for late fees succeed in the amount of \$55.00.

Issue 3: Vacant Possession of Rented Premises

Relevant Submissions

23. The landlord submitted a copy of 3 template section 19 termination notices served to the tenants' door, with proof of service, since December 2022 (L#4):
1) Issued 14 December 2022 – Move out effective 27 December 2022
2) Issued 16 January 2023 – Move out effective 29 January 2023;
3) Issued 08 February 2023 – Move out effective 21 February 2023.

24. According to the landlord's records, the tenants had not yet paid monthly rent on the date that each notice was issued and then proceeded to pay rent by the effective date identified on each of the notices served. The landlord is seeking an order for vacant possession of the rented premises because more than two section 19 termination notices have been issued to the tenants within the last 12 months.

Analysis

25. 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.*
- (3) *Subsection (2) does not apply where notice is given to a tenant under paragraph (1)(a) or (b) more than twice in a 12 month period.*

26. I accept the landlord's testimony and evidence and find that they are entitled to an order of vacant possession in accordance with 19(3) of the Act as shown above. This means, that even though the tenants appear to have consistently paid off their arrears prior to the effective date on the termination notices received, I find that the rental agreement is now terminated because the tenants have been issued more than two termination valid notices in the past 12 months.

Decision

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

28. The tenants 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 \$455.00

Relevant Submissions

29. The rental agreement provides evidence of a \$455.00 security deposit (L#2).

Analysis

30. Section 14, sub 10, 12 and 14 of the Residential Tenancies Act, 2018 states:

(10) *Where a landlord believes he or she has a claim for all or part of the security deposit,*

(a) *the landlord and tenant may enter into a written agreement on the disposition of the security deposit; or*

(b) *the landlord or the tenant may apply to the director under section 42 to determine the disposition of the security deposit.*

(12) *A landlord who does not make an application in accordance with subsection*

(11) *shall return the security deposit to the tenant.*

(14) *Where a landlord does not make an application under subsection (11), he or she is not prohibited from making an application under section 42 other than an application with respect to a claim against the security deposit.*

31. As the amount owing to the landlord for rent and late fees is in excess of the security deposit collected, I find that the landlord is entitled to retain the full amount of the \$455.00 security deposit.

Decision

32. The landlord shall retain the full value of the \$455.00 security deposit.

Issue 5: Hearing Expenses

33. The landlord claimed the \$20.00 expense of applying for this hearing as well as the associated expense of \$29.75 for serving both tenants by registered mail (L#5). As her claim has been successful, the tenants shall pay this expense of \$49.75.

Summary of Decision

34. The landlord is entitled to the following:

- To retain the full value of the \$455.00 security deposit.
- An order for vacant possession of the rented premises.
- An order for payment from the tenants in the amount of \$603.93 determined as follows:

a) Rent.....	\$954.18
b) Late Fees.....	\$55.00
c) Hearing Expenses	\$49.75
d) LESS Security Deposit.....	(\$455.00)
e) Total.....	<u>\$603.93</u>
- An order for payment of a daily rate of rent in the amount of \$35.34, beginning 28 April 2023 and continuing to the date the landlord obtains 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.

03 May 2023

Date

[Redacted]
Jaclyn Casler
Residential Tenancies Tribunal