

Residential Tenancies Tribunal

Decision 20-0027-04

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:04 pm AST on 02 December 2020 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing. The respondent, [REDACTED], hereinafter referred to as "the tenant", did not participate.

Issues before the Tribunal

3. The landlord is seeking the following:
 - a. An order for a payment of rent in the amount of \$8800.00;
 - b. An order for a payment of late fees in the amount of \$75.00; and
 - c. 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 22 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 a 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. The landlord submitted an affidavit with her application stating that she had served the tenant with notice of the hearing, by e-mail, on 26 October 2020 and the tenant has had 36 days to provide a response. She also submitted a copy of that e-mail with her application and she pointed out that that e-mail address was provided to her by the tenant in the submitted rental agreement. 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 his absence.

7. The landlord amended her application at hearing and stated that she was no longer seeking an order for possession as she took possession on 27 October 2020 after finding that the tenant had abandoned the unit.

Issue 1: Rent - \$8800.00

Relevant Submissions

8. The landlord stated that she had entered into 6-month, fixed-term lease with the tenant, commencing 23 October 2019, and a copy of that executed agreement was submitted with her application. The agreed rent was set at \$1400.00, due on the 23rd day of each month, and it is acknowledged in the lease that the tenant had paid a security deposit of \$700.00.
9. The landlord stated that the tenant had fallen into rental arrears in March 2020 and on 14 October 2020 she served him with a termination notice. That notice was issued under section 19 (notice where failure to pay rent) and section 22 (notice where tenant's obligation not met) of the *Residential Tenancies Act, 2018* and it had an effective termination date of 28 October 2020. The landlord regained possession of the property on 27 October 2020.
10. With her application the landlord submitted a copy of her rent records showing the payments she had received from the tenant since he moved into the unit. According to these records, the tenant last had a zero-balance February 2020 and since then she has only received partial monthly payments, and in March, September and October 2020, no payments were made whatsoever.
11. According to the landlord's calculations, the tenant owes \$8800.00 for the period ending 22 November 2020.

Analysis

12. I accept the landlord's testimony and evidence in this matter and I agree with her that the tenant has not paid his rent as required.

13. On review of the landlord's rent records, though, I note that, in the "Balance" column, she had recorded a balance of \$700.00 for January 2020 as the tenant had only paid \$700.00 on 23 January 2020. But her records show that the remaining \$700.00 owing for that month was paid on the following day, bringing the balance to zero. Nevertheless, the landlord has included that \$700.00 balance from 23 January 2020 in her calculation for the total arrears. I am of the view that that is an error.
14. I find that, based on these records, no rent is owing for January or February 2020 and that the tabulation for the total amount owing should only have started at 23 March 2020.
15. By my lights, the tenant owes \$8100.00 for the period from 23 March through to 22 November 2020.

Decision

16. The landlord's claim for a payment of rent succeeds in the amount of \$8100.00.

Issue 2: Late Fees

Relevant Submissions

17. The landlord has assessed late fees in the amount of \$75.00.

Analysis

18. Section 15.1(1) 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.

19. The minister has set the following fees:

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.

20. As the tenant has been in arrears since 24 March 2020, the landlord is entitled to an award for the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 3: Hearing Expenses

22. The landlord paid \$20.00 to file this application. As the landlord's claim has been successful, the tenant shall pay this hearing expense.

Issue 4: Security Deposit

23. The landlord stated that the tenant had paid a security deposit of \$700.00, on 23 October 2019 and receipt of that deposit is acknowledged in the submitted lease. As the landlord's claim has been successful, she shall retain that deposit as outlined in this decision and attached order.

Summary of Decision

24. The landlord is entitled to the following:

- a) Rent Owing \$8100.00
- b) Late Fees \$75.00
- c) Hearing Expenses \$20.00

- d) LESS: Security Deposit (\$700.00)

- e) Total Owing to Landlord \$7495.00

09 March 2021

Date

John R. Cook
Residential Tenancies Tribunal