

Residential Tenancies Tribunal

Decision 20-0077-03

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:02 pm on 09 February 2021 via teleconference.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED] [REDACTED], hereinafter referred to as "the landlord". The respondent, [REDACTED], hereinafter referred to as "the tenant", did not participate in the hearing.

Issues before the Tribunal

3. The landlord is seeking the following:
 - a. An order for a payment of rent in the amount of \$795.00,
 - 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 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 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 the tenant was served with notice of the hearing, by e-mail, on 30 November 2020 and a copy of that e-mail was submitted with her application. The tenant has had 70 days to provide a response. 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 and stated that she was now seeking a payment of rent in the amount of \$1530.00.

Issue 1: Rent - \$1530.00

Relevant Submissions

8. The landlord stated that she had entered into monthly rental agreement with the tenant on 01 April 2017. The current rent is set at \$245.00.
9. With her application, the landlord submitted rent records showing the payments she had received from the tenant since he moved into the unit. These records show that the last payment the landlord had received from the tenant was a payment of \$250.00 on 10 August 2020, leaving him with a balance of \$60.00 on that date. No payments have been made since.
10. The landlord is seeking an order for a payment of rent in the amount of \$1530.00 for the period ending 28 February 2021 (\$60.00 owing for the period ending 31 August 2020 and \$1470.00 for period from 01 September 2020 to 28 February 2021 (\$245.00 per month x 6 months)).

Analysis

11. I accept the landlord's testimony and evidence in this matter and I find that, based on her submitted evidence, the tenant owes \$1530.00 for the period ending 28 February 2021.
12. As the landlord is also seeking an order for vacant possession of the rented premises, I find that she is entitled to a payment of rent to the date of the hearing and a per diem thereafter. I calculate the amount owing to be \$1357.45 (\$1285.00 for the period ending 31 January 2021 (\$60.00 + \$1225.00 (5 months x \$245.00 per month) and \$72.45 for February 2021 (\$245.00 per month x 12 months = \$2940.00 per year ÷ 365 days = \$8.05 per day x 9 days = \$72.45)).

Decision

13. The landlord's claim for a payment of rent succeeds in the amount of \$1357.45.

14. The tenant shall pay a daily rate of rent in the amount of \$8.05, beginning 10 February 2021, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Late Fees - \$75.00

Relevant Submissions

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

Analysis

16. Section 15.1 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.

17. 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.

18. As the tenant has been in rental arrears since 02 June 2020, the landlord is entitled to an award for 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 which she stated was hand-delivered to the tenant on 01 October 2020.

21. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 12 October 2020.
22. The tenant has not moved out as required and the landlord is seeking an order for vacant possession of the rented premises.

Analysis

23. 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.

24. According to the landlord's rent records, on 01 October 2020 the tenant was in arrears in the amount of \$550.00 and had been in arrears since the beginning of June 2020. No payments were made to the landlord after the notice was issued and since then the rent for November 2020, December 2020, January 2021 and February 2021 has come due.
25. As the termination notice meets all the requirements set out in section 19 of the Act, it is a valid notice.

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

27. 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

28. As the landlord's claim has been successful, the tenant shall pay her hearing expense of \$20.00 for the costs of filing this application.

Summary of Decision

29. The landlord is entitled to the following:

- A payment of \$1452.45, determined as follows:

a) Rent Owing	\$1357.45
b) Late Fees	\$75.00
c) Hearing Expenses.....	\$20.00
d) Total	<u>\$1452.45</u>
- An order for vacant possession of the rented premises,
- A payment of a daily rate of rent in the amount of \$8.05, beginning 10 February 2021 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.

12 February 2021

Date

John R. Cook
Residential Tenancies Tribunal