

Residential Tenancies Tribunal

Decision 20-0388-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:02 pm on 17 November 2020 via teleconference.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED], hereinafter referred to as "the landlord".
3. The respondent, [REDACTED], hereinafter referred to as "the tenant", did not participate in the hearing.

Issues before the Tribunal

4. The landlord is seeking the following:
 - a. An order for a payment of rent in the amount of \$675.00,
 - 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

5. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
6. Also relevant and considered in this case are sections 15, 19 and 42 of the *Residential Tenancies Act, 2018* and rule 29 of the Rules of the Supreme Court, 1986.

Preliminary Matters

7. 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 notice of the hearing was sent to the tenant, by registered mail, on 28 October 2020. According to section 42.(6) of the *Residential Tenancies Act, 2018*, as the notice was sent by registered mail it is considered to have been served on him on the fifth day after mailing: 02 November 2020. 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.

8. The landlord amended her application and stated that she was now seeking a payment of rent in the amount of \$2700.00.

Issue 1: Rent - \$2700.00

Relevant Submissions

9. The landlord stated that she had entered into 1-year, fixed-term rental agreement with the tenant on 01 November 2017 and a copy of the executed lease was submitted with her application. The current rent is set at \$675.00 and it is acknowledged in the lease that the tenant had paid a security deposit of \$322.00.
10. The landlord submitted rent records with her application showing the payments she had received from the tenant since he moved into the property. According to these records, the tenant last had a zero-balance on 27 July 2020. Since then, no payments have been made to the landlord.
11. She is seeking an order for a payment of rent for the months of August, September, October and November 2020—a total of \$2700.00.

Analysis

12. I accept the landlord's testimony and evidence in this matter and I find that, based on her submitted evidence, the tenant has not paid his rent for the period from 01 August to 30 November 2020.
13. 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 \$2401.21 (\$2025.00 for the period ending 31 October 2020 (3 months x \$675.00 per month) and \$376.21 for November 2020 (\$675.00 per month x 12 months = \$8100.00 per year ÷ 366 days = \$22.13 per day x 17 days = \$376.21)).

Decision

14. The landlord's claim for a payment of rent succeeds in the amount of \$2401.21.
15. The tenant shall pay a daily rate of rent in the amount of \$22.13, beginning 18 November 2020, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Late Fees - \$75.00

Relevant Submissions

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

Analysis

17. 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.

18. 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.

19. As the tenant has been in rental arrears since 02 August 2020, the landlord is entitled to an award for the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 3 – Vacant Possession of Rented Premises

Relevant Submissions

21. With her application, the landlord submitted a copy of a termination notice which she stated had been placed under the tenant's door on 14 August 2020.
22. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 27 August 2020.
23. The tenant has not vacated the rented premises as required and the landlord is seeking an order for vacant possession of the rented premises.

Analysis

24. 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.

25. According to the landlord's rent records, on 14 August 2020 the tenant was in arrears in the amount of \$675.00 and had been in arrears since the beginning of that month. No payments were made by the tenant prior to the termination date of 27 August 2020 and since then rent has come due for September, October and November 2020.

26. As the termination notice meets all the requirements set out in section 19 of the Act, it is a valid notice.

Decision

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

28. 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

29. The landlord submitted a hearing expense claim form and a receipt showing that she had paid a fee of \$20.00 to file this application and a receipt showing that she was charged \$11.69 to serve the tenant by registered mail. As the landlord's claim has been successful, the tenant shall pay these hearing expenses.

Issue 5: Security Deposit

30. The landlord stated that the tenant had paid a security deposit of \$322.00 on 06 October 2017 and receipt of that deposit is acknowledged in the submitted rental agreement. As the landlord's claim has been successful, she shall retain that security deposit as outlined in this decision and attached order.

Summary of Decision

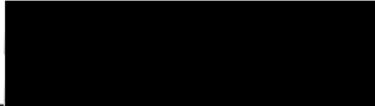
31. The landlord is entitled to the following:

- A payment of \$2185.90 , determined as follows:
 - a) Rent Owing\$2401.21
 - b) Late Fees\$75.00
 - c) Hearing Expenses.....\$31.69
 - d) **LESS: Security Deposit.....(\$322.00)**
 - e) Total.....\$2185.90
- An order for vacant possession of the rented premises,
- A payment of a daily rate of rent in the amount of \$22.13, beginning 18 November 2020 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.

18 November 2020

Date


John R. Cook
Residential Tenancies Tribunal