

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0043-03

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:12 PM on 03 November 2021 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," also participated.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for a payment of rent in the amount of \$392.50,
 - An order for a payment of late fees in the amount of \$39.00,
 - An order for vacant possession of the rented premises, and
 - Authorization to retain the \$588.25 security deposit.

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 *Residential Tenancies Act, 2018* and rule 29 of the *Rules of the Supreme Court, 1986*.

Issue 1: Rent Owning - \$392.50

Relevant Submissions

The Landlord's Position

6. The landlord stated that she had entered into a monthly agreement with the tenant on 15 April 2021 and a copy of that executed agreement was submitted with her application (█ #1). The agreed rent was set at \$785.00 per month and it is acknowledged in the agreement that the tenant had paid a security deposit of \$588.75.
7. With her application, the landlord submitted a copy of her rent records (█ #2) showing the payments she had received from the tenant since he had moved into the rental unit. According to these records, the tenants rent was paid and up-to-date for the period ending 31 October 2021, but she has not yet received any rent for November 2021.
8. The landlord is seeking an order for a payment of rent in the amount of \$785.00 for November 2021.

The Tenant's Position

9. The tenant acknowledged that he had not yet paid his rent for November 2021.

Analysis

10. There is no dispute that the tenant has not paid his rent for November 2021. 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.
11. I calculate the rent owing to be \$77.43 ($\$785.00 \text{ per month} \times 12 \text{ months} = \$9420.00 \div 365 \text{ days} = \$25.81 \text{ per day} \times 3 \text{ days}$).

Decision

12. The landlord's claim for a payment of rent succeeds in the amount of \$77.43.
13. The tenant shall pay a daily rate of rent in the amount of \$25.81, beginning 04 November 2021, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Late Fees - \$39.00

14. The landlord has assessed a \$39.00 late fee.

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. According to the landlord's rent records, the tenant was late paying his rent for July 2021 and she assessed late fees, which she calculated had amounted to \$39.00 when she filed her application on 21 July 2021.
17. The tenant continued to pay his rent since July 2021, but no payment was made towards the late fees and they continued to accumulate to the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 3: Vacant Possession of the Rental Premises

Relevant Submissions

The Landlord's Position

19. With her application, the landlord submitted a copy of a termination notice (redacted #3) which she stated was delivered to the tenant on 08 July 2021. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 19 July 2021.
20. The landlord stated that when the tenant moved in, she had entered into an agreement with him that he would be permitted to pay his rent in 2 installments each month, on the 1st and on the 15th day, until he went back to work in May 2021.

21. She complained, though, that the tenant continues to pay his rent in 2 installments each month and he is often late with those payments. Her records show that on 08 July 2021, when the notice was issued, the tenant had not yet paid his rent for that month. After the notice was issued, the tenant paid half of his rent, \$392.50, on 09 July 2021. She received the second half of July's rent on 22 July 2021.
22. The landlord is seeking an order for vacant possession of the rented premises based on that termination notice.

The Tenant's Position

23. The tenant stated that the termination notice was taped to his door and he acknowledged receiving it on 08 July 2021. He also agreed with the landlord's claim that he paid half of his rent for July 2021 on the following day.
24. The tenant argued that the agreement that he had with the landlord concerning his rent payments was that he was permitted to pay his rent in 2 installments "for a couple of months" until he got back to work in May 2021. He claimed that because of the COVID-19 pandemic, he never did get any work and he continued to pay his rent in 2 installments. He stated that he had told the landlord that he would inform her when he was able to secure work.

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.

26. The landlord and the tenant concurred that they had entered into a written agreement on 15 April 2021 concerning the rent payments and that agreement was read out by the landlord at the hearing. The agreement states:

We have made an agreement that you will pay \$372.50 on the first of the month and \$372.50 mid-month for the next couple of months, until which time you are back to work mid-May. Once you are back to work, you will be paying the full rent on the 1st of every month.

27. When the landlord entered into this agreement with the tenant, she had been informed by the tenant that he would be returning to work in mid-May 2021, and that after that time, he would be able to pay all of his rent on the first day of the month.
28. Although I accept the tenant's claim that he did not go back to work in mid-May 2021 as he had hoped, I don't accept his argument that the agreement permitted him to continue to pay his rent in installments until such time as he got back to work. Rather, it was a short-term arrangement, entered into on the assurances that the tenant's financial position would improve after May 2021.
29. As the agreement was entered into on 15 April 2021, "the next couple of months" meant May and June 2021. Based on that agreement, the expectation would have been that the tenant would resume paying his full rent on the first day of the month, commencing 01 July 2021.
30. According to the landlord's rent records, on 08 July 2021, when the termination notice was issued, the tenant had been in rental arrears, for the full amount of rent for July 2021, \$785.00, since the beginning of the month. Although the tenant did pay \$392.50 on the following day, that left him with a balance owing of \$392.50.
31. That remaining amount, \$392.50, was not paid off prior to 19 July 2021, the effective termination date set out in the notice.
32. As the notice meets all the timeframe requirements set out in this section of the *Act*, it is valid.

Decision

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

34. 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

35. The landlord submitted a hearing expense claim form with her application, as well as a receipt showing that she had paid \$20.00 to file this application and a receipt showing that she had paid \$20.00 to have her affidavit of service notarized. As the landlord's claim has been successful, the tenant shall pay these hearing expenses.

Issue 5: Security Deposit

36. The landlord stated that the tenant had paid a security deposit of \$588.75 on 15 April 2021 and receipt of that deposit is acknowledged in the submitted lease. As the landlord's claim has been successful, she is authorized to retain \$192.43 from that deposit for the rent (\$77.43), late fees (\$75.00) and hearing expenses (\$40.00) that are owing, as outlined in this decision and attached order.

Summary of Decision

37. The landlord is entitled to the following:
- An order for vacant possession of the rented premises,
 - A payment of a daily rate of rent in the amount of \$25.81, beginning 04 November 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.
 - The landlord is authorized to retain \$192.43 of the security deposit.

09 November 2021

Date

