

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0050-02

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:15 AM on 01 March 2022 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:
 - An order for a payment of rent in the amount of \$2450.00, and
 - 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 is sections 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 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 she has been properly served. The landlord submitted an affidavit with her application stating that she had sent the application and notice of the hearing to the tenant, by e-mail, on 11 February 2022, and she has had 19 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 her absence.

7. The landlord amended her application at the hearing and stated that she was now seeking a total claim of rent in the amount of \$7425.00. This amount included \$75.00 in assessed late fees.

Issue 1: Rent - \$7425.00

Relevant Submissions

8. The landlord testified that she had had entered into a rental agreement with the tenant on 30 October 2021. The agreed rent was set at \$2450.00 per month, and this rent included the provision of all of the utilities and the unit came completely furnished.
9. The landlord stated that after the tenant moved in, she had only made 1 rent payment to her, for the month of November 2021, and no payment have been made since.
10. The landlord is seeking an order for a payment of rent for the months of December 2021, January 2022 and February 2022.

Analysis

11. I accept the landlord's claim that the tenant has not paid her rent as required. Based on the landlord's testimony, I find that the tenant owes 3 month's rent for the period between 01 December 2021 and 28 February 2022.
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.
13. I calculate the amount owing to be \$7430.55 (\$7350.00 for December 2021, January 2022 and February 2022 (\$2450.00 x 3 months) and \$80.55 for 01 March 2022 (\$2450.00 per month x 12 months = \$29,400.00 per year ÷ 365 days = \$80.55 per day)).

Decision

14. The landlord's claim for a payment of rent succeeds in the amount of \$7430.55.

15. The tenant shall pay a daily rate of rent in the amount of \$80.55, beginning 02 March 2022, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Late Fees - \$75.00

Analysis

16. 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.

17. As the tenant has been arrears since December 2021, the landlord is entitled to a payment of 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 Rented Premises

Relevant Submissions

19. With her application, the landlord submitted copies of 2 termination notices which she stated she had sent to the tenant, by text-message, on 30 November 2021 (█ #1) and 07 December 2021 (█ #2).
20. That first notice, Exhibit █ #1, was issued under section 18 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 28 February 2022.

21. The second notice, Exhibit ██████ #2, was issued under section 19 of the *Act*, and it had an effective termination date of 07 December 2021.
22. The landlord stated that the tenant has not moved out, as required, and she is seeking an order for vacant possession of the rented premises

Analysis

23. As the notice issued on 07 December 2021 had the earliest termination date, let's examine the validity of that notice first.
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 testimony, on 07 December 2021, when the notice was issued, the tenant was in rental arrears in the amount of \$2450.00, and has been in arrears since the beginning of that month. No rent payments were made to the landlord after the notice was issued.
26. As the notice meets all the requirements set out in this section of the *Act*, and as it was properly served, it is a valid notice.

27. Given that this notice is valid, there is no need to examine the validity of the earlier notice, issued on 30 November 2021.

Decision

28. The landlord’s claim for an order for vacant possession of the rented premises succeeds.

29. 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.

Summary of Decision

30. The landlord is entitled to the following:

- A payment of \$2500.74, determined as follows:
 - a) Rent Owing\$7430.55
 - b) Late Fees\$75.00
 - c) Total.....\$7505.55
- An order for vacant possession of the rented premises,
- A payment of a daily rate of rent in the amount of \$80.55, beginning 02 March 2022 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.

04 March 2022

Date

