

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0156-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:15 pm on 11 May 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”, 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 \$3285.00;
 - b. An order for a payment of late fees in the amount of \$75.00;
 - c. An order for a payment of \$20.00 in hearing expenses; and
 - d. 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) a respondent 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 he has been properly served. The landlord submitted an affidavit with his application stating that he had personally served the tenant with notice of the hearing on 30 April 2021 and he has had exactly 10 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 his application at the hearing stated that the total rent owing as of the date of the hearing was \$3930.00.

Issue 1: Rent - \$3930.00

Relevant Submissions

8. The landlord stated that he had entered into a monthly rental agreement with the tenant 01 April 2019. The agreed rent was set at \$1100.00 per month and the landlord testified that the tenant had paid a security deposit of \$825.00.
9. With his application, the landlord had submitted a copy of his rent records (█ #1). The landlord stated that these records cover both the payments he had received from the tenant and from the occupant of the basement apartment. At the hearing, the landlord stated that he does not record the amounts of rent payments received on a particular date, but rather he merely tracks the overall balance.
10. Although the landlord was not able to identify, in his submitted records, how he determined the rent owing for the tenant, he testified that the tenant owes \$535.00 for February 2021 and that no rent has been received for March, April or May 2021.
11. The landlord calculates that the tenant owes \$3930.00 for the period ending 31 May 2021.

Analysis

12. Based on the landlord's records, I am unable to determine when any payments were made, what the amount of those payments were, or whether they were from the tenant or the occupant of the basement apartment. Accordingly, I will disregard those records in making any decision about the rent that is owing.
13. The tenant did not attend the hearing to provide any evidence on his rent payments, and I therefore can only make a determination based on the landlord's testimony.

14. According to that testimony, the tenant owes \$535.00 for February 2021 and \$1100.00 for each of March, April and May 2021.
15. By my calculations, the total rent owing is \$3835.00.

Decision

16. The landlord's claim for a payment of rent succeeds in the amount of \$3835.00.

Issue 2: Late Fees - \$75.00

Analysis

17. 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.

18. As the tenant has been in arrears since at least February 2021, the landlord is entitled to a payment of 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 his application, the landlord submitted a copy of a termination notice #2) which he stated he had personally delivered to tenant on 13 December 2020.

21. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 24 December 2020.
22. 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

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. At the hearing, I asked the landlord how much rent the tenant owed on 13 December 2020, the date the termination notice was issued. He testified that he did not know how much rent was owing.
25. I also asked the landlord what payments were made to him after the notice was issued. He testified that he did not know what payments were made, or when.
26. In order for a landlord to be granted an order for possession of rented premises under this section of the *Act*, he has the burden of establishing, on the balance of probabilities, that the tenant was in rental arrears for at least 5 days when the notice was issued and that the tenant did not pay off those arrears prior to the termination date specified in that notice. As the landlord did not know what

payments were made, in what amount, or when, I conclude that he has failed to meet that burden.

27. As such, his claim does not succeed.

Decision

28. The landlord’s claim for an order for vacant possession of the rented premises does not succeed.

Issue 4: Hearing Expenses

29. The landlord paid a fee of \$20.00 to file this application. As his claim for rent and late fees has been successful, the tenant shall pay that hearing expense.

Summary of Decision

30. The landlord’s claim for an order for vacant possession of the rented premises does not succeed.

31. The landlord is entitled to a payment of \$3930.00, determined as follows:

- a) Rent Owing\$3835.00
- b) Late Fees\$75.00
- c) Hearing Expenses.....\$20.00

- d) Total.....\$3930.00

14 May 2021

Date

