

Residential Tenancies Tribunal

Decision 21-0245-05

John R. Cook
Adjudicator

Introduction

1. Hearing was called at 11:15 am on July 27, 2021 via teleconference.
2. The applicant, [REDACTED] represented by [REDACTED] hereinafter referred to as “the landlord,” attended by teleconference.
3. The respondent, [REDACTED] hereinafter referred to as “the tenant,” did not attend.

Issues before the Tribunal

4. The landlord is seeking the following:
 - An order for a payment of rent in the amount of \$1580.00,
 - An order for a payment of late fees in the amount of \$75.00, and
 - 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: jurisdiction of the Director of Residential Tenancies.
6. Also relevant and considered in this case are sections 15, 19 and 34 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 at the start of the hearing. 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 he has been properly served. The landlord submitted an affidavit with her application (█████#04) stating that she had served the tenant with notice of the hearing by registered mail on 29 June 2021. Although that notice was eventually returned to the landlord and was never collected by the tenant, according to the Act, the tenant is considered to have been served on the 5th day after mailing, which is 04 July 2021. 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 updated the amount owing to reflect the date of hearing. To date the outstanding amount is for three months rent, totalling \$2,370.00

Issue 1: Rental Arrears - \$2370.00

Relevant Submissions

9. The landlord stated that she entered a written agreement for a one-year, fixed-term rental with the tenant in beginning May 1, 2021. The current rent is \$790.00 a month with rent being due on the 1st of each month. There was no security deposit paid.
10. The landlord also provided the rent ledger (█████#02) showing no rent paid since the beginning of occupancy on May 01, 2021.
11. The landlord is seeking an order for a payment of rent for the months of May, June and July 2021 and she calculates that she is owed \$2370.00.

Analysis

12. Non-payment of rent violates the rental agreement, therefore the landlord's claim for past due rent succeeds. 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 that the landlord is entitled to a payment of \$2281.19 (\$1580.00 for the period ending 30 June 2021 (\$790.00 per month x 2 months) and \$701.19 for July 2021 (\$790.00 per month x 12 months = \$9480.00 per year ÷ 365 days = \$25.97 per day x 27 days))

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14. The landlord's claim for a payment of rent succeeds in the amount of \$2281.19.
15. The tenant shall pay a daily rate of rent in the amount of \$25.97, beginning 28 July 2021, 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 he moved into the unit in May 2021, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

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

Issue 2: Vacant Possession of the Rental Premises

Relevant Submissions

19. Included in the application, the landlord submitted a copy of the termination notice (■■■■ #03) which she stated was hand delivered in person by the Resident Manager on May 28, 2021 with a termination date of June 09, 2021.
20. The termination notice was issued under section 19 of the *Residential Tenancies Act, 2018* (notice where failure to pay rent) with an effective termination date of June 09, 2021.
21. The landlord is seeking an order for vacant possession of the premises.

Analysis

22. 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.

23. The landlord's claim for an order for vacant possession of the rented premises succeeds.
24. Section 19 of the *Act* allows a landlord to terminate a rental agreement with 10 days notice to the tenant, where the tenant is overdue for 5 days or more in their rental payment. As the notice meets the requirements set out in this section of the *Act* and it was properly served, it is a valid notice and the tenant ought to have vacated the apartment on June 09, 2021.

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

Summary of Decision

- 27. The landlord is entitled to the following:
 - A payment of \$2356.19, determined as follows:
 - a) Rent Owing\$2281.19
 - b) Late Fees\$75.00
 - c) Total.....\$2356.19
 - An order for vacant possession of the rented premises,
 - A payment of a daily rate of rent in the amount of \$25.97, beginning 28 July 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.

03 August 2021

Date

