

## Residential Tenancies Tribunal

Application [REDACTED]

Decision 20-0261-05

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 9:16 AM on 09 September 2021 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:
  - a. An order for a payment of rent in the amount of \$1030.00;
  - b. An order for a payment of late fees in the amount of \$75.00; and
  - c. Authorization to retain the \$225.00 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 is section 15 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 he has been properly served. The landlord submitted an affidavit with his application stating that he had served the tenant with notice of the hearing, by e-mail, on 27 August 2021, and a copy of that e-mail was submitted with his application. 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.

## **Issue 1: Rent - \$1030.00**

### **Relevant Submissions**

7. The landlord stated that he had entered into a monthly rental agreement with the tenant on 26 August 2020, and a copy of that executed agreement was submitted with his application (████#1). The agreed rent was set at \$450.00 per month and it is acknowledged in the rental agreement that the tenant had paid a security deposit of \$225.00.
8. The landlord stated that the tenant had fallen into rental arrears in 2021 and on 28 March 2021 the landlord issued the tenant a termination notice. That notice had an effective termination date of 08 April 2021, but the tenant did not vacate until 09 May 2021.
9. With his application, the landlord submitted a copy of his rent records (████#2) showing the payments he had received from the tenant since he moved into the unit. These records show that the tenant last had a zero-balance on 28 February 2021, but the landlord stated that no payments were made since.
10. The landlord is seeking an order for a payment of \$450.00 for each of March and April 2021, as well as a pro-rated rent in the amount of \$130.00 for the 9 days of May 2021 that the tenant resided at the property.

### **Analysis**

11. I accept the landlord's testimony and evidence in this matter and I find that the tenant had not paid any rent after 28 February 2021. As the tenant vacated the property on 09 May 2021, I agree with the landlord that he is entitled to \$900.00 in rent for both March and April 2021, and a pro-rated rent of \$130.00 for May 2021.

### **Decision**

12. The landlord's claim for a payment of rent succeeds in the amount of \$1030.00.

## **Issue 2: Late Fees - \$75.00**

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

### **Analysis**

14. 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.*

15. 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. As the tenant has been arrears since at least March 2021, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

### **Decision**

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

## **Issue 3: Security Deposit**

18. The landlord stated that the tenant had paid a security deposit of \$225.00 on 25 August 2020, and receipt of that deposit is acknowledged in the submitted rental agreement. As the landlord's claim has been successful, he shall retain that deposit as outlined in this decision and attached order.

## **Issue 4: Hearing Expenses**

19. With his application, the landlord submitted a receipt showing that he had paid \$20.00 to file this application and a second receipt showing that he had paid \$25.00 to have his affidavit notarized.

20. As the landlord's claim has been successful, the tenant shall pay the landlord's hearing expenses. However, policy with this Section is that an applicant may not claim the costs of having documents notarized by a Commissioner for Oaths, as these Commissioners are not permitted to charge such fees.

**Summary of Decision**

21. The landlord is entitled to the following:

- a) Rent Owing .....\$1030.00
- b) Late Fees .....\$75.00
- c) Hearing Expenses.....\$20.00
- d) **LESS: Security Deposit..... (\$225.00)**
- e) Total Owing to Landlord .....\$900.00

04 May 2021

\_\_\_\_\_  
Date

