

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0342-05

Jacqueline Williams
Adjudicator

Introduction

1. The hearing was called at 10:04 a.m. on September 16, 2021 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” was present at the hearing
3. The tenants, [REDACTED], hereinafter referred to as tenant1 and tenant2, were not present

Preliminary Matters

4. On April 07, 2021 the parties participated in a hearing, for file number [REDACTED] that resulted in the following order being issued:
 - Orders that the tenants, [REDACTED], shall pay to the landlord, [REDACTED], a total of **\$539.01** determined as follows:

○ Rent Owing	\$345.24
○ Late Fees	75.00
○ Payment of Utilities	98.77
○ Hearing Expenses	20.00
○ Total Owing to Landlord	\$539.01
 - Orders that the tenant, [REDACTED], shall pay to the landlord, [REDACTED], a daily rate of rent in the amount of **\$49.32** beginning **08 April 2021** and continuing until the landlord obtains vacant possession of the rental property.
 - Orders that the tenant, [REDACTED], shall pay to the landlord, [REDACTED], any costs charged to the landlord for the certification of an order or by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

5. This decision will not consider the issues previously decided by order for file number [REDACTED] and dated April 9, 2021.
6. The landlord applied for rent arrears in the amount of \$3,848.00. Future rent was calculated for a daily rate as shown in paragraph 5; this order is still enforceable.
7. The landlord submitted affidavits of service ([REDACTED] #01 & [REDACTED] #02) declaring that she served both tenants by giving the notice of hearing to tenant2 on August 31, 2021. This is considered good service.
8. The tenants were not present or represented at 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. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.

Issues before the Tribunal

9. The landlord is seeking the following:
 - Utilities, pay per view billing totaling \$302.20
 - Late fees \$33.00
 - Vacant Possession
 - Hearing expense \$20.00

Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the Residential Tenancies Act, 2018.
11. Also relevant and considered in this decision is section 19 of the Residential Tenancies Act, 2018; notice where failure to pay rent.

Issue 1: Utilities Pay per View bill \$302.20

Relevant Submissions

12. The landlord included an invoice ([REDACTED] #04) for pay per view for the house in question. The invoice was updated to the date of the hearing. The balance is \$302.20.
13. The tenants live in a two apartment home. The landlord testified that the downstairs tenant has a block on her cable box that doesn't permit pay per view.

14. The tenants rent includes high speed internet and cable but it doesn't include pay per view.

Analysis

15. The rental agreement states that the tenants are responsible for the cost of pay per view.
16. The only unit that has access to this service is the apartment in question.
17. The landlord provided a ledger (█#04) for pay per view movies and events.
18. Her ledger (█#04) shows three movie rentals after the date of the previous hearing of April 7, 2021. They are dated for May 8, May 25 and June 25, 2021. The movies are at a cost of \$5.74 each taxes included, for a total amount owing of \$17.22.
19. As there was no previous decision awarding payment for the new charges from pay for view, the landlord's claim succeeds in the amount of \$17.22.

Decision

20. The landlord's claim for utility succeeds in the amount of \$17.22

Issue 2: Late Fees Totaling \$33.00

Relevant Submissions

21. The landlord submitted a rent ledger indicating rent owing and late fees. The landlord was tabulating the late fees every month from December to the day of the hearing.
22. The late fees assessed for September, 2021 equal \$33.00

Analysis

23. The landlord was awarded the maximum amount of late fees \$75.00 from Order █ as shown in paragraph 5. As, the tenant has remained in arrears since April 7, 2021 and the landlord has reached the maximum amount of late fees payable, no additional late fees may be assessed.

Decision

24. The landlord's claim for additional late fees fails.

Issue 4: Vacant Possession of the Rental Premises

Relevant Submissions

25. The landlord's rent ledger indicates the tenants have remained in arrears since April 7, 2021. The landlord submitted a notice to terminate early for nonpayment of rent (█ #05). It is dated for a termination date of August 13, 2021. The landlord signed the notice on August 02, 2021.
26. The landlord testified that on the date the notice was signed she emailed the notice to both tenants by email. The email addresses are the ones they provided her and she has corresponded with them through those email address both before and after she had send the notice.

Analysis

27. 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.

....

Decision

28. The landlord's claim for an order for vacant possession succeeds based termination notice issued (█ #05) with a termination date of August 13, 2021.
29. 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 5: Reimbursement for Hearing Costs

Relevant Submissions

30. The applicant submitted a claim for hearing expenses in the amount of \$20.

Analysis

31. The Order for file number [REDACTED] dated April 9, 2021 awarded the applicant hearing expenses of \$20.00. The refiling of this application was the result of the Landlord's failure to enforce the previous order and is not the burden of the tenant.

Decision

32. The applicants claim for reimbursement of hearing costs fails.

Summary of Decision

33. The landlord is entitled to the following:

- Payment for Pay per view charges totaling \$17.22
- An order for vacant possession of the rented premises.
- 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.

October 19, 2021

Date

