

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0470-05

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:15 a.m. on 02-December-2021
2. The applicant, [REDACTED] hereinafter referred to as “the landlord” attended by teleconference.
3. The respondents, [REDACTED] hereinafter referred to as “tenant1 and tenant2” did not attend.

Preliminary Matters

4. The tenants were not present or represented at the hearing and I was unable to reach them 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 respondents’ absence so long as they have been properly served. The landlord submitted an affidavit (LL#01) with his application stating that he had served the tenants with notice of the hearing, by giving it personally to their daughter who is 16 years old. He gave the notification to her on 05-November-2021. 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.
5. The landlord amended his application to reflect the current amount of rent owing from \$5,900.00 to \$7,550.00. He also requested that late fees be applied.

Issues before the Tribunal

6. The landlord is seeking:
 - Rent \$7,550.00
 - Late fees \$75.00

- Vacant possession of the property
- Hearing expenses reimbursed \$20.00

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outline in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
8. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 15: Fee for failure to pay rent and Section 19: Notice where failure to pay rent.

Issue 1: Rent \$7,550.00

Relevant Submissions

9. The landlord submitted a rental agreement (LL#02) he had with another tenant, [REDACTED]. She had signed a lease for a year, however, she wanted to move in October, she is friends with the current tenants and they agreed to take over this agreement. The initial agreement was for a term of one year from 01-April-2016 until 31-March-2017. The tenants took occupancy on 01-Oct-2016 and are now in a monthly term. The rent is from the 1st to the last of the month for \$1,300.00 due on the first day of the month. The initial tenant [REDACTED] had paid a security deposit of \$600.00 and the tenants reimbursed her for the security deposit; the landlord still has this in his possession.
10. The landlord said he had an agreement that each of the tenants paid their own portion of the rent, with each of them paying \$650.00 a month and he documented their separate payments on their rent ledger (LL#03).
11. The landlord said that he received payments sporadically since last September and adjusted the amount owed from the most outstanding payment. The last payment he received from tenant1 was on 23-October-2021 for \$350.00. The last payment he received from tenant2 was 30-September-2021 for \$350.00.
12. The landlord amended tenant1's balance to reflect an extra \$150.00 that was paid and not credited.

Analysis

13. Non-payment of rent is a violation of the rental agreement.
14. As the tenants are both individually and collectively responsible for the rent, the amount owed will be calculated jointly.

15. Both tenants are charged for December's rent, in the landlord's ledger. December's rent should be calculated for a daily rate up to the day of the hearing. Rent \$1,300.00 x 12 months = \$15,600.00 a year. \$15,600.00 divided by 365 days = \$42.74 a day. \$42.74 x 2 days = \$85.48.
16. The rent ledger shows that the tenants (with the amendment made in paragraph 12) and a daily rate for December owe \$6,535.48. See below:

Rent ledger

Date	Action	Amount	total
June 2021	Rent owed	\$ (500.00)	(500.00)
July 2021	Rent owed	\$ (1,300.00)	(1,800.00)
July 2021	rent paid in Sept & Oct	\$ 550.00	(1,250.00)
August 2021	Rent owed	\$ (1,300.00)	(2,550.00)
September 2021	Rent owed	\$ (1,300.00)	(3,850.00)
October 2021	Rent owed	\$ (1,300.00)	(5,150.00)
November 2021	Rent owed	\$ (1,300.00)	(6,450.00)
December 2021	daily rate	\$ (85.48)	(6,535.48)

Decision

17. The tenants owe \$6,535.48 to the landlord.

Issue 2: Late fees \$75.00

Relevant Submissions

18. The rent ledger (LL#03) submitted by the landlord, as well as the table in paragraph 16, indicates that the tenants have been in arrears since June.
19. The landlord said that he and his wife have had to use their line of credit to pay the mortgage on the house and that he is paying interest on that loan because he isn't receiving any rent.

Analysis

20. 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.

21. As the tenants have been arrears since June the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

22. The tenants shall pay late fees to the landlord in the amount of \$75.00.

Issue 3: Vacant Possession of the Rental Premises

Relevant Submissions

23. The landlord submitted the termination notice: Landlord's notice to terminate early – cause, for failure to pay rent. It is signed on 29-September-2021 and dated for 10-October-2021. He said he delivered it in person to tenant1 and they spoke about rent owed.

Analysis

24. The relevant subsections of s.19 of the Residential Tenancies Act, 2018 state:

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.

....

25. At the time the Landlord served notice to the tenant (LL#04) on 29-September-2021, the rent was in arrears since June.
26. Section 28. (2) of the *Residential Tenancies Act 2018*, says that if a tenant is in arrears for 5 days or more then the landlord can give notice of not less than 10 days. The termination notice was served on 29-September-2021 with a termination date of 10-October-2021. This meets the standards in the *Act*.

Decision

27. The landlord's claim for vacant possession of the rented premises succeeds.
28. The tenants should have vacated by 10-October-2021.
29. The tenants will pay \$42.74 a day, beginning 03-December-2021, until the landlord regains vacant possession of his property.
30. 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.

Issue 4: Hearing Expenses Reimbursed \$20.00

31. As the landlord's claim has been successful, the tenant's shall pay the hearing expense (LL#05); \$20.00 for the cost of filing this application.

Summary of Decision

32. The landlord is entitled to the following:
 - Rent owing \$6,535.48
 - Late fees \$75.00
 - Hearing expenses \$20.00
 - Total \$ 6,630.48
33. The tenants shall move immediately.

34. The tenants shall pay \$42.74 a day, beginning 03-December-2021, until the landlord regains vacant possession of his property.
35. The landlord is also entitled to:
- An order for vacant possession of the rented premises.
 - The tenants 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.

December 6, 2021
Date

