

## Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0543-05

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 2:01 PM on 16 February 2022 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:
  - An order for a payment of rent in the amount of \$1590.00,
  - 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

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 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) 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 stating that she had sent the application and notice of the hearing to the tenant, by registered mail, on 20 December 2021. Although the tracking history shows that the tenant never did collect that registered mail, section 42.(6) of the *Residential Tenancies Act, 2018* states that it is nevertheless deemed to have been served on the fifth day after mailing: 25 December 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.

7. The landlord amended her application at the hearing and stated that she was now seeking a total claim of rent in the amount of \$3180.00.

### **Issue 1: Rent - \$3180.00**

#### **Relevant Submissions**

8. The landlord testified that she had had entered into a rental agreement with the tenant on 01 June 2021. The agreed rent was set at \$795.00 per month and the landlord stated that the tenant had paid a security deposit of \$397.50.
9. With her application, the landlord submitted a copy of her rent records showing the rent payments she had received from the tenant since he had moved into the unit (█#1). According to these records, the tenant last had a zero-balance in September 2021, and he then failed to pay his rent for the next 4 months: October 2021, November 2021, December 2021 and January 2022. Rent for February 2022 was paid on 02 February 2022.
10. The landlord is seeking an order for a payment of \$3180.00—4 months rent—for the period ending 28 February 2022.

#### **Analysis**

11. I accept the landlord's claim that the tenant has not paid his rent as required. Based on the landlord's records and testimony, I find that the tenant owes 4 month's rent for the period between October 2021 and January 2022.
12. 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 the amount owing to be \$2803.24 (\$3180.00 for the period ending 31 January 2022 (4 months x \$795.00 per month) less a credit of \$376.76cr for February 2022 (\$795.00 per month x 12 months = \$9540.00 per year ÷ 365 days = \$26.14 per day x 16 days = \$418.24 less the payment of \$795.00 on 02 February 2022)).

## Decision

14. The landlord's claim for a payment of rent succeeds in the amount of \$2803.24.
15. The tenant shall pay a daily rate of rent in the amount of \$26.14, beginning 17 February 2022, 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 October 2021, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

## Decision

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

## Issue 3: Vacant Possession of Rented Premises

### Relevant Submissions

19. With her application, the landlord submitted a copy of a termination notice (█ #2) which she stated was delivered to the tenant, by her resident manager, on 10

November 2021. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 17 December 2021.

20. The landlord stated that the tenant has not moved out, as required, and she is seeking an order for vacant possession of the rented premises

## Analysis

21. 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.***

22. According to the landlord's records, on 10 November 2021, the day the termination notice was issued, the tenant was in arrears in the amount of \$1590.00, and had been in arrears since the beginning of October 2021.
23. As the notice meets all the requirements set out in this section of the *Act*, and as it was properly served, it is a valid notice

## Decision

24. The landlord's claim for an order for vacant possession of the rented premises succeeds.

25. 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 3: Hearing Expenses**

26. The landlord paid a fee of \$20.00 to file this application. As her claim has been successful, the tenants shall pay this hearing expense.

**Issue 4: Security Deposit**

27. The landlord stated that the tenant had paid a security deposit of \$397.50 on 07 June 2021. As the landlord's claim has been successful, she shall retain that deposit as outlined in this decision and attached order.

**Summary of Decision**

28. The landlord is entitled to the following:

- A payment of \$2500.74, determined as follows:
  - a) Rent Owing .....\$2803.24
  - b) Late Fees .....\$75.00
  - c) Hearing Expenses.....\$20.00
  - d) **LESS: Security Deposit..... (\$397.50)**
  - e) Total .....\$2500.74
- An order for vacant possession of the rented premises,
- A payment of a daily rate of rent in the amount of \$26.14, beginning 17 February 2022 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.

21 February 2022  
\_\_\_\_\_  
Date

