

## Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0557-05

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 1:55 PM on 09 March 2022 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”, also participated.

### Issues before the Tribunal

3. The landlord is seeking the following:
  - An order for a payment of rent in the amount of \$800.00,
  - An order for a payment of late fees in the amount of \$25.00. and
  - An order for a security deposit in the amount of \$400.00 to be applied against monies owed.

### 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 14, 15, 19 and 23 of the *Residential Tenancies Act, 2018*

## Issue 1: Rent - \$800.00

### Relevant Submissions

#### The Landlord's Position

6. The landlord stated that he had entered into a monthly rental agreement with the tenant on 23 February 2021. The agreed rent was set at \$800.00 per month and a security deposit in the amount of \$400.00 was collected on 23 February 2021.
7. On 01 November 2021, the tenant issued the landlord a termination notice and a copy was submitted with the landlord's application (L#1). That notice was issued under section 23 of the *Residential Tenancies Act, 2018* (notice where landlord contravenes peaceful enjoyment and reasonable privacy) and it had an effective termination date of 15 November 2021.
8. The landlord also issued a termination notice to the tenant (L#2). This notice was issued on 08 November 2021, under section 19 of the *Act* (notice where failure to pay rent) and identified a move out date of 18 November 2021. The landlord stated that he had issued this notice as the tenant had not paid her rent for November 2021.
9. The tenant vacated on 14 November 2021. After the tenant moved out, the landlord testified that had carried out some minor cleaning at the unit and in January 2022, he started to advertise the unit again for re-rent. He has yet to find new tenants.
10. The landlord is seeking an order for a payment of \$800.00 for rent for November 2021.

#### The Tenant's Position

11. The tenant acknowledged that she had not paid any money to the landlord towards November's rent.
12. With respect to the notice she had issued to the landlord, the tenant testified that she served this notice after repeated incidents whereby the landlord would enter her apartment in the evening and come into her bedroom without her permission and without giving a written notice of entry. The tenant testified that she felt very uncomfortable living in his house and that the landlord first began entering her premises in March 2021.
13. In response, the landlord testified that he was "shocked" by the tenant's accusation and declared them "total fabrications". He spoke of how the door between his unit and the tenants can be locked from both sides. He stated that he only entered her rental premises after he first texted her for her permission, and that this permission was provided.

## Analysis

14. With respect to the termination notices that the landlord and the tenant had issued to each other, I find that neither of these notices are valid.
15. The landlord had denied that he had entered the tenant's apartment without her permission, and the tenant failed to provide any supporting documentation, photographic evidence, or other witness testimony to support her claims. As such, I find that, on the balance of probabilities, the tenant had not established that the landlord was interfering with her right to peaceful enjoyment and privacy.
16. Regarding the landlord's notice, as it is not disputed that the tenant had not paid her rent for November 2021, I agree with him that he was entitled to terminate their agreement on 08 November 2021. But section 19 of the *Residential Tenancies Act, 2018* states that a termination notice issued under this section of the Act must specify a termination date that is "not less than 10 days after the notice is served on the tenant." That is, there must be 10 full, or clear, days between the date the notice is served and the date the tenant has to vacate. On 08 November 2021, the earliest the landlord could have terminated this tenancy, under this section of the *Act*, would have been 19 November 2021.
17. As the tenancy was not properly terminated in accordance with *Residential Tenancies Act, 2018*, when the tenant moved out on 14 November 2021 she is considered to have abandoned the property.
18. Statutory condition 4, set out in section 10 of the *Act* states:

### **Statutory conditions**

*10. (1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:*

...

*4. Mitigation on Abandonment - Where the tenant abandons the residential premises, the landlord shall mitigate damages that may be caused by the abandonment to the extent that a party to a contract is required by law to mitigate damages.*

"Mitigation" in this context means that the landlord ought to take all reasonable steps to minimize any damages that may be caused as a result of the tenant moving out without proper notice, and this includes minimizing any loss of rental income by trying to put new paying tenants in place as soon as possible.

19. The landlord testified that even though he was informed on 01 November 2021 that the tenant was moving out, he did not start advertising the unit for rent until January 2022. As the landlord did not mitigate his damages, I find that he is only entitled to rent up to the date the tenant vacated. I calculate that amount to be \$373.33 (\$800.00 for November 2021 x 14/30).

### **Decision**

20. The landlord's claim for a payment of rent succeeds in the amount of \$373.33.

### **Issue 2: Late Fees - \$25.00**

#### **Analysis**

21. 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.*

22. As the tenant has been in arrears since 02 November 2021, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

### **Decision**

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

### **Issue 3: Security Deposit**

24. Both parties agreed that a \$400.00 security deposit was collected in February 2021. As the landlord's claim for rent and late fees has been successful, he shall retain that security deposit as outlined in this decision and attached order.

**Issue 4: Hearing Expenses**

25. The landlord claimed the \$20.00 application fee and the \$100.00 charge for hiring a process server to serve the tenant with the application. As the landlord's claim for compensation has been successful, the tenant shall pay the \$120.00 hearing expenses.

**Summary of Decision**

26. The landlord is entitled to the following a payment of \$168.33, determined as follows:

- a) Rent Owing .....\$373.33
- b) Late Fees .....\$75.00
- c) Hearing Expenses.....\$120.00
- d) Less Security Deposit.....(\$400.00)
- e) Total .....\$168.33

11 October 2022

\_\_\_\_\_  
Date

