

## Residential Tenancies Tribunal

Decision 20-0116-05

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 9:03 am on 21 August 2020 via teleconference.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED], hereinafter referred to as "the landlord". The respondents, [REDACTED] and [REDACTED], hereinafter referred to as "the tenants", 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 \$2175.00;
  - b. An order for a payment of late fees in the amount of \$75.00; and
  - c. 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 are 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 tenants were not present or represented at the hearing and I was unable to reach them 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 a respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as she has been properly served. The landlord submitted an affidavit with her application stating that she had served the tenants with notice of the hearing, by e-mail, on 04 August 2020 and they have had 16 days to provide a response. She also submitted a copy of that e-mail with her application. 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.

7. The landlord amended her application and stated that she was now seeking a payment of rent in the amount of \$3238.33.

### **Issue 1: Rent - \$3238.33**

#### **Relevant Submissions**

8. The landlord stated that she had entered into a 1-year, fixed-term lease with the tenants on 01 August 2019. The agreed rent was set at \$725.00 per month and the landlord stated that the tenants had paid a security deposit of \$386.67.
9. In December 2019 the tenants fell into rental arrears and the landlord stated that she was working with the tenants, and their family, in an attempt to get the rent straightened out. However, although the tenants kept making promises to pay, they never lived up to those promises and the rent arrears kept accumulating.
10. Accordingly, on 18 February 2020 the landlord issued the tenants a termination notice and a copy of that notice was submitted with her application. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* (notice where failure to pay rent) and it had an effective termination date of 29 February 2020.
11. The landlord stated that the tenants did not move at the end of February 2020, as required, but she did eventually regain possession of the unit on 25 May 2020 after she found that it had been abandoned by the tenants.
12. The landlord submitted rent records showing the payments she had received from the tenants since they moved into the property. According to these records, the tenants last had a zero-balance in November 2019. Since then, the tenants have paid no rent to the landlord.
13. The landlord is seeking an order for a payment of rent for the period from 01 December 2019 to 30 April 2020, a period of 5 months.

## Analysis

14. I accept the landlord's testimony and evidence in this matter and I agree with her that she is entitled to a payment of 5 months' rent. I calculate the rent owing to be \$3625.00 (5 months x \$725.00 per month).

## Decision

15. The landlord's claim for a payment of rent succeeds in the amount of \$3625.00.

## Issue 2: Late fees - \$75.00

### Relevant Submissions

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

## Analysis

17. Section 15.(1) 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.*

18. The minister has set the following fees:

*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.*

## Decision

19. As the tenants have been in arrears since 02 December 2019, the landlord is entitled to an award for the maximum fee of \$75.00 set by the minister.

**Issue 3: Hearing Expenses**

20. The landlord paid \$20.00 to file this application. As the landlord’s claim has been successful, the tenants shall pay this hearing expense.

**Issue 4: Security Deposit**


21. The landlord stated that the tenants had paid a security deposit of \$386.67 at the end of July 2019. As the landlord’s claim has been successful, she shall retain that deposit as outlined in this decision and attached order.

**Summary of Decision**

22. The landlord is entitled to the following:

- a) Rent Owing .....\$3625.00
- b) Late Fees .....\$75.00
- c) Hearing Expenses.....\$20.00
- d) LESS: Security Deposit..... (\$386.67)
- e) Total Owing to Landlord .....\$3333.33

26 October 2020  
Date

  
John R. Cook  
Residential Tenancies Tribunal