

## Residential Tenancies Tribunal

Decision 20-0143-05

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 9:05 am on 14 July 2020 via teleconference.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED], hereinafter referred to as “the landlord”.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant”, did not participate in the hearing.

### Issues before the Tribunal

4. The landlord is seeking the following:
  - a. An order for a payment of rent in the amount of \$697.50,
  - 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

5. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
6. Also relevant and considered in this case are sections 15 and 19 of the *Residential Tenancies Act, 2018*.

### Preliminary Matters

7. 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 respondents fail 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.

8. The landlord submitted an affidavit stating that she had sent the notice of the hearing to the tenant by registered mail on 03 March 2020. According to section 42.(6) of the *Residential Tenancies Act, 2018*, the tenant is considered to have been served with the notice on the fifth day after mailing: 08 March 2020. 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.

### **Issue 1: Rent Owing - \$697.50**

#### **Relevant Submissions**

9. The landlord entered into a 1-year, fixed-term rental agreement with the tenant, commencing 15 November 2019, and a copy of that executed lease was submitted with her application. The agreed rent was set at \$675.00 per month, due on the 1<sup>st</sup> day of each month and the lease also states that the tenant would pay a pro-rated rent of \$360.00 for the period from 15 November to 30 November 2020.
10. The landlord submitted rent records with her application showing the payments she had received from the tenants since they had moved into the rented premises. According to these records, the tenant was consistently late paying his rent and the landlord received each monthly payment near the last day of the month.
11. Besides the regular rent payments, the tenant had also made a payment of \$337.50 on 03 December 2019, presumably to be applied towards the pro-rated rent for November 2019. The landlord pointed out that that payment was \$22.50 short of the required \$360.00.
12. As of the date of the hearing, the landlord has yet to receive rent for July 2020 (\$675.00) and the tenant has not yet paid the remaining \$22.50 owing for November 2019. She is seeking an order for a payment of \$697.50.

#### **Analysis**

13. I accept the landlord's claim that the tenant had not paid rent as required. 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.

14. I calculate the amount owing to be \$332.32 (\$22.50 owing for the period ending 30 June 2020 and \$309.82 for July 2020 (\$675.00 per month x 12 months = \$8100.00 per year ÷ 366 days = \$22.13 x 14 days = \$309.82)).

### **Decision**

15. The landlord's claim for a payment of rent succeeds in the amount of \$332.32.
16. The tenants shall pay a daily rate of rent in the amount of \$22.13, beginning 15 July 2020, and continuing to the date the landlord obtains vacant possession of the rented premises.

### **Issue 2: Late Fees**

#### **Relevant Submissions**

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

#### **Analysis**

18. 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.*

19. 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.*

20. As the tenant has been in arrears since 16 November 2019, the landlord is entitled to an award for the maximum fee of \$75.00 set by the minister.

### **Decision**

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

### Issue 3: Vacant Possession of the Rented Premises

#### Relevant Submissions

22. The landlord submitted a copy of a termination notice which she stated was posted on the tenant's door on 13 February 2020.
23. This termination notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 25 February 2020.
24. The landlord stated that the tenant has not vacated the rented premises as required and she is seeking an order for vacant possession.

#### Analysis

25. 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.*

26. According to the landlord's rent records, on 13 February 2020 the tenant was in arrears in the amount of \$697.50 and had been in arrears since November 2019. No payments were made by the tenant prior to the effective termination date set out in that notice.
27. As the tenant had not paid off the arrears prior to 25 February 2020 and as the notice meets the timeframe requirements set out in section 19 of the *Act*, it is a valid notice.

## Decision

28. The landlord's claim for an order for vacant possession of the rented premises succeeds.
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 4: Hearing Expenses

30. The landlord submitted a hearing expense claim form and receipts showing that she had paid a fee of \$20.00 to file this application and had paid \$11.05 to send the notice of the hearing to the tenant by registered mail. As the landlord's claim has been successful, the tenant shall pay these hearing expenses.

### Issue 5: Security Deposit

31. The landlord stated that the tenant had paid a security deposit of \$337.00 on 14 November 2019 and receipt of that deposit is acknowledged in the submitted lease. As the landlord's claim has been successful, she shall retain the security deposit as outlined in this decision and order.

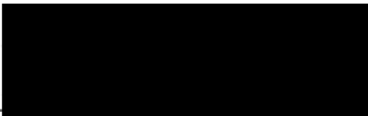
### Summary of Decision

32. The landlord is entitled to the following:
  - A payment of \$1411.78, determined as follows
    - a) Rent Owing .....\$332.32
    - b) Late Fees .....\$75.00
    - c) Hearing Expenses.....\$31.05
    - d) **LESS: Security Deposit..... (\$337.00)**
    - e) Total Owing to Landlord .....\$101.37
  - A payment of a daily rate of rent in the amount of \$22.13, beginning 15 July 2020 and continuing to the date the landlord obtains possession of the rental unit,
  - 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.

17 July 2019

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
John R. Cook  
Residential Tenancies Tribunal