

## Residential Tenancies Tribunal

Decision 20-0154-05

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 1:05 pm on 15 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 \$465.00,
  - 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

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. I was able to reach her by telephone but she declined to participate in 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 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 tenant with notice of the hearing, by e-mail, on 04 March 2020. A copy of that e-mail was submitted by the landlord as well as a rental application in which that e-mail address was provided to the landlord by the tenant. 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.

8. The landlord amended her application and stated that she was now seeking a payment of rent in the amount of \$3405.00.

### **Issue 1: Rent Owning - \$3405.00**

#### **Relevant Submissions**

9. The landlord stated that she had entered into a 1-year, fixed-term rental agreement with the tenant on 01 June 2019 and a copy of the lease was submitted with the landlord's application. The rent was set at \$930.00 per month and when the lease expired in 2020, it reverted to a monthly tenancy and the landlord increased the monthly rent to \$1005.00.
10. The landlord submitted rent records with her application showing the payments she had received from the tenant since she had moved into the rented premises. According to these records, the tenant fell into rental arrears in October 2019, and she has not had a zero-balance since that time.
11. At the end of April 2020, the rent records show that the tenant had a balance owing of \$465.00. No rent was paid for May 2020 (\$930.00), June 2020 (\$1005.00) or July 2020 (\$1005.00). The landlord calculates that the tenant owes \$3405.00 in rent and she is seeking an order for a payment in that amount.

#### **Analysis**

12. I accept the landlord's claim that the tenant has 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.
13. I calculate the amount owing to be \$2894.25 (\$2400.00 owing for the period ending 30 June 2020 (\$465.00 owing for April 2020 + \$930.00 for May 2020 + \$1005.00 for June 2020) and \$494.25 for July 2020 (\$1005.00 per month x 12 months = \$12060.00 per year ÷ 366 days = \$32.95 per day x 15 days = \$494.25)).

## Decision

14. The landlord's claim for a payment of rent succeeds in the amount of \$2894.25.
15. The tenant shall pay a daily rate of rent in the amount of \$32.95, beginning 16 July 2020, and continuing to the date the landlord obtains vacant possession of the rented premises.

## Issue 2: Late Fees

### 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.*

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

## Decision

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

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

#### Relevant Submissions

21. The landlord submitted copies of 6 termination notices she had issued to the tenant since August 2019. The landlord stated that she had posted the most recent termination notice to the tenant's door on 13 February 2020.
22. 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.
23. The landlord stated that the tenant has not vacated the rented premises as required and she is seeking an order for vacant possession.

#### Analysis

24. 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.*

25. According to the landlord's rent records, on 13 February 2020 the tenant was in arrears in the amount of \$930.00 and had been in arrears since October 2019. Although the tenant did make 1 payment of \$465.00 on 25 February 2020, this only reduced the balance owing to \$465.00 and the tenant has remained in rental arrears since that date.
26. As the tenants had not paid off the arrears prior to 24 December 2019 and as the notice meets the timeframe requirements set out in section 19 of the *Act*, it is a valid notice.

## Decision

27. The landlord's claim for an order for vacant possession of the rented premises succeeds.
28. 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

29. The landlord submitted a hearing expense claim form a receipt showing that she had paid a fee of \$20.00 to file this application. As the landlord's claim has been successful, the tenant shall pay this hearing expenses.

### Issue 5: Security Deposit

30. The landlord stated that the tenant had paid a security deposit of \$465.00 on 03 May 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

31. The landlord is entitled to the following:
  - A payment of \$2524.25, determined as follows
    - a) Rent Owing .....\$2894.25
    - b) Late Fees .....\$75.00
    - c) Hearing Expenses.....\$20.00
    - d) **LESS: Security Deposit..... (\$465.00)**
    - e) Total Owing to Landlord .....\$2524.25
  - A payment of a daily rate of rent in the amount of \$32.95, beginning 16 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