

## Residential Tenancies Tribunal

Decision 20-0244-05

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 9:15 am on 25 June 2020 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 in the hearing.

### Issues before the Tribunal

3. The landlord is seeking the following:
  - a. An order for a payment of rent in the amount of \$2462.83,
  - 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 landlord called the following witness: [REDACTED] (“[REDACTED]”).
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) a respondent 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. ■■■ testified that he had personally served the tenant with notice of the hearing on 10 June 2020 and the tenant has had 14 days to provide a response. 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 at the hearing and stated that she was now seeking rent in the amount of \$3262.83.

### **Issue 1: Rent Owing - \$3262.83**

#### **Relevant Submissions**

9. The landlord stated that she had entered into a monthly rental agreement with the tenant on 15 March 2019. The agreed rent is set at \$815.00 per month, but the landlord stated that that rate was reduced to \$800.00 in April 2020 in response to the COVID-19 outbreak. The landlord also stated that the tenant had paid a security deposit of \$372.00.
10. The landlord submitted rent records with her application showing the payments she had received from the tenant since he had moved into the rented premises. According to these records, the tenant last had a zero-balance in November 2019. Since that time, the tenant has failed to pay the full amount of rent that was owing each month, and the rental arrears have accrued to \$3262.83 for the period ending 30 June 2020.
11. The landlord is seeking an order for a payment of rent in the amount of \$3262.83.

#### **Analysis**

12. I accept the landlord's claim that the tenant has not paid rent as required. I also accept her records which show that the tenant owes \$3262.83 for the period ending 30 June 2020. As such, her claim succeeds in that amount.

#### **Decision**

13. The landlord's claim for a payment of rent succeeds in the amount of \$3262.83.

## Issue 2: Late Fees

### Relevant Submissions

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

### Analysis

15. 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.*

16. 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.*

17. As the tenant has been in arrears since December 2019, the landlord is entitled to an award for 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 the Rented Premises

### Relevant Submissions

19. The landlord submitted a copy of a termination notice with her application which she stated was posted on the tenant's door, by ■■■, on 14 May 2020.
20. This termination notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 21 May 2020.
21. The landlord stated that the tenant has not vacated the rented premises as required and she is seeking an order for vacant possession.

## Analysis

22. 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.*

23. According to the landlord's rent records, on 14 May 2020 the tenant had been in rental arrears for 5 months and the landlord was therefore in a position to terminate the rental agreement under this section of the *Act*.

24. However, the termination notice issued by the landlord is not valid. A notice 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". But as the notice was served on 14 May 2020, the earliest date the landlord could require the tenant to vacate would have been 25 May 2020, not 21 May 2020.

## Decision

25. The landlord's claim for an order for vacant possession of the rented premises does not succeed.

## Issue 4: Hearing Expenses

26. As the landlord's claim has been successful, the tenants shall pay her hearing expense of \$20.00 for the costs of filing this application.

**Summary of Decision**


27. The landlord is entitled a payment of \$3357.83, determined as follows:

- a) Rent Owing .....\$3262.83
- b) Late Fees .....\$75.00
- c) Hearing Expenses.....\$20.00
  
- d) Total Owing to Landlord .....\$3357.83

28. The landlord’s claim for an order for vacant possession of the rented premises does not succeed.

14 July 2020

\_\_\_\_\_  
Date

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