

## Residential Tenancies Tribunal

Decision 20-0276-05

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 1:08 am on 04 August 2020 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”, 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 \$650.00,
  - 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 is 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 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 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. The landlord testified that he had sent the notice of the hearing to the tenant by Xpresspost on 16 July 2020. According to section 47.(6) of the *Residential Tenancies Act, 2018*, it is therefore considered to have been served on the tenant on 21 July 2020. The tenant has had 13 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.

7. The landlord amended his application and stated that he was now also seeking rent for July and August 2020 for a total claim of \$1950.00.

### **Issue 1: Rent Owing - \$1950.00**

#### **Relevant Submissions**

8. The landlord stated that he had entered into a 1-year, fixed-term rental agreement with the tenant on 01 July 2019 and a copy of the executed lease was submitted into evidence. The agreed rent was set at \$650.00 per month, due on the 1<sup>st</sup> day of each month.
9. The landlord submitted rent records with his application showing the payments he had received from the tenant since he moved in.
10. According to these records, the tenant's rent was paid and up-to-date for the period ending 31 May 2020. The landlord pointed out, though, that the tenant has paid no rent for June, July or August 2020 and he is seeking a total payment of \$1950.00 for those 3 months.

#### **Analysis**

11. I accept the landlord's claim that the tenant had not paid rent as required and his evidence shows that he has received no rent for the last 3 months. As the landlord is seeking an order for possession of the rented premises, I find that he is entitled to a payment of rent to the date of the hearing and a per diem thereafter.
12. I calculate the rent owing to be \$1385.24 (\$1300.00 owing for the period ending 31 July 2020 and \$85.24 for August 2020 (\$650.00 per month x 12 months = \$7800.00 per year ÷ 366 days = \$21.31 per day x 4 days = \$85.24)).

#### **Decision**

13. The landlord's claim for a payment of rent succeeds in the amount of \$1385.24.

14. The tenant shall pay a daily rate of rent in the amount of \$21.31, beginning 05 August 2020, and continuing to the date the landlord obtains vacant possession of the rented premises.

## **Issue 2: Late Fees - \$75.00**

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

### **Analysis**

16. 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.*

17. 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.*

18. As the tenant has been in arrears since 02 May 2020, the landlord is entitled to an award for the maximum fee of \$75.00 set by the minister.

### **Decision**

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

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

### **Relevant Submissions**

20. With his application, the landlord submitted a copy of a termination notice he had issued to the tenant on 11 May 2020. 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 28 May 2020.

21. The landlord stated that the tenant has not vacated as required and he is seeking an order for vacant possession of the rented premises.

## **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),**

*(a) where the residential premises is rented from week to week and the amount of rent payable by a tenant is overdue for 3 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 3 days after the notice is served on the tenant; and*

*(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.*

*(2) Notwithstanding subsection (1), where the tenant pays the full amount of the overdue rent, including a fee under section 15, before the date specified in the notice under paragraph (1)(a) or (b), the rental agreement is not terminated and the tenant is not required to vacate the residential premises.*

23. According to the landlord's testimony and rent records, on 11 May 2020 the tenant was in arrears in the amount of \$300.00 and had been in arrears since the beginning of that month.
24. These records also show that on 13 May 2020, just 2 days after the notice was issued, the tenant paid that outstanding \$300.00, leaving him with a zero-balance.
25. However, although the tenant had paid off the outstanding rent that was owing for May 2020, he has not paid to the landlord the late fees that were assessed. In addition to the rent, the late fees were to be paid prior to 28 May 2020.

26. As no additional money has been received from the tenant after the payment of \$300.00 on 13 May 2020, and as the termination notice meets the timeframe requirements set out in this Section of the Act, his notice is valid.

**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.

**Summary of Decision**

29. The landlord is entitled to the following:

- A payment of \$1460.24, determined as follows
  - a) Rent Owing .....\$1385.24
  - b) Late Fees .....\$75.00
  - c) Total Owing to Landlord .....\$1460.24
- A payment of a daily rate of rent in the amount of \$21.31, beginning 05 August 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.

11 August 2020  
\_\_\_\_\_  
Date

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