

Residential Tenancies Tribunal

Application [REDACTED]

Decision 20-0461-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:02 pm on 11 January 2021 via teleconference.
2. The applicant, [REDACTED] was represented at the hearing by [REDACTED] Clancey, 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:
 - An order for vacant possession of the rented premises,
 - An order for a payment of rent in the amount of \$124.00, and
 - An order for a payment of late fees in the amount of \$75.00.

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 section 18 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 her 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 she has been properly served. The landlord submitted an affidavit with her application stating that she had personally served the tenant with notice of this hearing on 23 October 2020 and she has had 69 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 her absence.

7. The landlord amended her application at the hearing and stated that she was now seeking a total of \$338.00 in rental arrears.

Issue 1: Rent - \$338.00

Relevant Submissions

8. The landlord stated that she had entered into monthly rental agreement with the tenant on 01 July 2019. The current rent is set at \$845.00 and the landlord stated that the tenant had paid a security deposit of \$625.10.
9. The landlord submitted rent records with her application showing the payments she had received from the tenant since she moved into the property. According to these records, the tenant's rent was being paid on her behalf by [REDACTED] and the [REDACTED].
10. These records show that since the early part of 2020, [REDACTED] was paying \$311.00 of the rent per month while [REDACTED] was paying a total of \$184.00. Their total payment came to \$495.00, which was \$340.00 short of monthly rent of \$835.00 that was owing at that time and, accordingly, the tenant had been carrying rental arrears since the turn of the last year. In June 2020 [REDACTED] had made an adjustment payment of \$1020.00 to reduce the balance owing to \$104.00 and they also they began paying \$651.00 per month. The rent increased to \$845.00 on 01 July 2020.
11. With the starting balance \$104.00 in June 2020, and because the tenant was short by \$10.00 in her combined payments each month, the rental arrears continued to accrue. As of 01 January 2021, the landlord had yet to receive the \$184.00 payment from [REDACTED] and the rental arrears stand at \$338.00. The landlord is seeking an order for a payment of rent in that amount.

Analysis

12. I accept the landlord's testimony and evidence in this matter and I find that, based on her submitted evidence, the tenant owes \$338.00 for the period ending 31 January 2021.
13. 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. I calculate that the tenant actually has a rent credit of \$201.42cr (the tenant had a credit of \$507.00cr for the period ending 31 December 2020 and she only owes \$305.58 for January 2021 (\$845.00 per month x 12 months = \$10,140.00 per year ÷ 365 days = \$27.78 per day x 11 days = \$305.58)).

Decision

14. The tenant has a rent credit of \$201.42cr for the period ending 11 January 2021.
15. The tenant shall pay a daily rate of rent in the amount of \$27.78, beginning 12 January 2021, and continuing to the date the landlord obtains vacant possession of the rented premises.

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.

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

Decision

20. As the landlord's claim for late fees has succeeded, her rent credit is reduced by \$75.00 to \$146.42cr (\$201.42cr - \$75.00).

Issue 3: Vacant Possession of the Rented Premises

Relevant Submissions

21. With her application, the landlord submitted a copy of a termination notice which she stated was delivered to the tenant on 21 September 2020.
22. This termination notice was issued under section 18 of the *Residential Tenancies Act, 2018* (notice of termination of rental agreement) and it had an effective termination date of 31 December 2020.
23. The landlord stated that the tenant has not moved out of the unit as required and she is seeking an order for vacant possession of the rented premises.

Analysis

24. The relevant subsections of s.18 of the *Residential Tenancies Act, 2018* state:

Notice of termination of rental agreement

18. (2) A landlord shall give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises

...

(b) not less than 3 months before the end of a rental period where the residential premises is rented from month to month

...

(9) In addition to the requirements under section 34, a notice under this section shall

(a) be signed by the person providing the notice;

(b) be given not later than the first day of a rental period;

(c) state the date, which shall be the last day of a rental period, on which the rental agreement terminates and the tenant intends to vacate the residential premises or the date by which the tenant is required to vacate the residential premises; and

(d) *be served in accordance with section 35*

25. Section 18 of the *Act* allows a landlord to terminate a rental agreement, on 3 month's notice, without having to provide reasons to either the tenant or this Board.
26. As the notice meets all the requirements set out in this section of the *Act* and as it was properly served, it is a valid notice and the tenant ought to have vacated the unit on 31 December 2020.

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 tenant has a rent credit of \$146.42cr.
30. The landlord is entitled to the following:
 - An order for vacant possession of the rented premises,
 - A payment of a daily rate of rent in the amount of \$27.78, beginning 12 January 2021 and continuing to the date the landlord obtains possession of the rental unit,
 - 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.

14 January 2021

Date


John R. Cook
Residential Tenancies Tribunal