

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0338-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 2:03 PM on 28 September 2021 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”, also participated.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for a payment of rent in the amount of \$3975.00;
 - An order for a payment of late fees in the amount of \$75.00
 - Authorization to retain the security deposit of \$662.50; and
 - 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, 19 and 34 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

6. The landlord amended her application at the hearing stated that the total rent owing as of the date of the hearing was \$5300.00.

Issue 1: Rent - \$5300.00

Relevant Submissions

The Landlord's Position

7. With her application, the landlord submitted a rental agreement (█ #1) showing that she had entered into a 6-month, fixed-term lease with █ commencing 01 March 2021. The agreed rent was set at \$1325.00 per month and it is acknowledged in the lease that █ had paid a security deposit of \$662.50.
8. On 01 May 2021 that lease was assigned to the tenant and █ moved out of the unit.
9. The landlord submitted rent records (█ #2) showing the payments she had received from the tenant since he moved in. According to those records, the tenant paid his rent for May 2021, as required, but no payments have been made since.
10. The landlord is seeking an order for a payment of \$5300.00 for the rent that is owing for June, July, August and September 2021.

The Tenant's Position

11. The tenant acknowledged that he had not paid his rent for those 4 months.
12. He stated that, as a result of the COVID-19 pandemic, he was required to work from his apartment, but he claimed that he was unable to get adequate cellular coverage from that unit. He stated that as his job requires that he be on his cellular phone for up to 8 hours a day, he was therefore unable to work and could not pay his rent.
13. The tenant testified that in July 2021 he had contacted the landlord about this matter and requested that he be moved to another apartment. He also requested that he be allowed to pay off his outstanding rent through a payment plan. He testified that the landlord did not respond to either of those requests.

The Landlord's Response

14. The landlord stated that she had responded to the tenant and she read out that e-mail response at the hearing. A copy of that e-mail was also submitted after the hearing had concluded (█ #3). In that e-mail, dated 16 July 2021, the landlord writes that she would be willing to enter into a payment plan, but cautioned that all of the outstanding rent had to be paid by 27 July 2021, the termination date set out in the termination notice issued to the tenant.

15. The landlord stated that the tenant never did respond to that e-mail.
16. The landlord also argued that she is not responsible for the tenant's spotty cellular coverage and she suggested that this is something that he ought to address with his service provider.
17. She also pointed out that the tenant had returned to work on 03 July 2021, yet he has yet to make any rent payments.

Analysis

18. It is not disputed that the tenant had not paid his rent for June, July, August and September 2021 and that he is currently in arrears in the amount of \$5300.00.
19. I have no reason to doubt that the tenant's cellular phone may have had poor reception at the rented premises, but no evidence was presented at the hearing to establish that this was the fault of the landlord or to establish that there was anything she could do to rectify that matter.
20. In any case, even if the poor cellular coverage was caused by some sort of structural feature of the complex which could have been rectified by the landlord, a tenant is not permitted, without the permission of the Director, to withhold rent until repairs are carried out.

Decision

21. The landlord's claim for a payment of rent succeeds in the amount of \$5300.00.

Issue 2: Late Fees - \$75.00

22. The landlord has assessed a late fee of \$75.00.

Analysis

23. Section 15 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.*

The minister has prescribed the following:

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.

24. As the tenant has been arrears since 02 June 2021, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 3: Vacant Possession of Rented Premises

Relevant Submissions

The Landlord's Position

26. With her application, the landlord submitted a copy of a termination notice (█ #4) which she stated was slipped under the tenant's door on 15 July 2021.
27. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 27 July 2021.
28. The tenant has not moved out, as required, and the landlord is seeking an order for vacant possession of the rented premises.

The Tenant's Position

29. The tenant acknowledged that he had received the termination notice.
30. He stated that he has a new apartment lined up and will be moving out on 15 October 2021.

Analysis

31. 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.

(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.

...

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

- (a) be signed by the landlord;*
- (b) state the date on which the rental agreement terminates and the tenant is required to vacate the residential premises; and*
- (c) be served in accordance with section 35.*

32. On 15 July 2021 when the termination notice was issued, the tenant was in arrears in the amount of \$2650.00 and had been in arrears since the beginning of June 2021. No payments were made after the termination notice was issued and since then rent for August and September 2021 has also come due. Accordingly, the termination notice meets all the timeframe requirements set out in this section of the Act.

33. However, it is not in compliance with section 34, which states:

Requirements for notices

34. A notice under this Act shall

- (a) be in writing in the form prescribed by the minister;*
- (b) contain the name and address of the recipient;*
- (c) identify the residential premises for which the notice is given;*
and

(d) state the section of this Act under which the notice is given.

34. The termination notice submitted by the landlord identifies the residential complex as being located at [REDACTED] But the residential complex the tenant resides in is located at [REDACTED] As the landlord has misidentified the residential premises in the termination notice, that notice is not valid.

Decision

35. The termination notice issued to the tenant on 15 July 2021 is not a valid notice.

36. The landlord’s claim for an order for vacant possession does not succeed.

Issue 4: Hearing Expenses

37. The landlord paid a fee of \$20.00 to file this application. As the landlord’s claim for rent and late fees has been successful, the tenant shall pay that hearing expense.

Summary of Decision

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

39. The landlord is entitled to a payment of \$5395.00, determined as follows:

- a) Rent Owing\$5300.00
- b) Late Fees\$75.00
- c) Hearing Expenses.....\$20.00
- d) Total.....\$5395.00

October 6, 2021

Date

