

Residential Tenancies Tribunal

Decision 20-0141-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:05 am on 08 July 2020 via teleconference.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED], hereinafter referred to as “the landlord”.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as “the tenants”, 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 \$750.00,
 - 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 tenants were not present or represented at the hearing and I was unable to reach them 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 respondents fail to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondents' absence so long as they have been properly served.

8. The landlord submitted affidavits stating that she had sent the notice of the hearing to the tenants by registered mail on 03 March 2020 and she submitted copies of the tracking histories with her application. Those tracking histories show that notice cards were left for the tenants indicating that the notices were available for pick-up at the Post Office, but they were never collected by the tenants.
9. Section 42 of the *Residential Tenancies Act, 2018* states:

Application to director

42. (1) A landlord or tenant may, within one year after termination of the rental agreement, apply to the director to determine

(a) a question arising under this Act or the regulations;

(b) whether a provision of a rental agreement has been contravened; or

(c) whether a provision of this Act or the regulations has been contravened.

(2) An application under subsection (1) shall be submitted to the director in the form and with the fee set by the minister.

(3) The applicant shall serve the application submitted to the director under subsection (2) by

(a) giving it personally to the other party;

(b) sending it to the other party by prepaid registered mail or prepaid express post at an address provided by the other party;

(c) sending it electronically where

(i) it is provided in the same or substantially the same form as the written notice or document,

(ii) the other party has provided an electronic address for receipt of documents, and

(iii) it is sent to that electronic address; or

(d) sending it to the other party by courier service at an address provided by the other party.

...

(6) For the purpose of this section, where a copy of the application is sent by registered mail or express post, it shall be considered to have been served on the fifth day after mailing, and the service may be proved by providing evidence that the copy of the application was prepaid and properly addressed and sent.

10. Although the tenants never did receive notices of the hearing, as they were sent by registered mail on 03 March 2020, they are considered to have been served on 10 March 2020. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.
11. The landlord amended her application at the hearing and stated that she was now seeking rent in the amount of \$250.00.

Issue 1: Vacant Possession of the Rented Premises

Relevant Submissions

12. The landlord stated that she had entered into a 1-year, fixed-term rental agreement with the tenants, commencing 01 December 2019, and a copy of that executed lease was submitted with her application. The agreed rent was set at \$725.00 per month and it is acknowledged in the lease that the tenants had paid a security deposit of \$735.00.
13. The landlord submitted rent records showing the payments she had received from the tenants since they had moved into the rented premises.
14. According to these records, on 13 February 2020 the tenants were in arrears in the amount of \$725.00 and had been in arrears since the beginning of January 2020.
15. Because the tenants had fallen into arrears, the landlord stated that she issued them a termination notice on 13 February 2020 and a copy of that notice was submitted with her application.
16. 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.
17. According to the landlord's records, no rent payments were made between 13 February 2020, when the notice was issued, and 25 February 2020, the effective date of the notice. The landlord is seeking an order for vacant possession of the rented premises.

Analysis

18. 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.

19. I accept the landlord's evidence which shows that the tenants had been in rental arrears for over a month when the landlord issued them the termination notice.
20. As the tenants had not paid off the arrears prior to 25 February 2020 and as the notice meets the timeframe requirements set out in section 19 of the *Act*, it is a valid notice.

Decision

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

22. The tenants 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 2: Rent Owing - \$250.00

Relevant Submissions

23. According to the landlord's records, the tenants rent cheques for the months of January, March and June 2020 were returned for the reason of "non-sufficient funds" (NSF).
24. The landlord pointed out that the tenants did make 2 additional payments to her, in March and July 2020, totalling \$1275.00, but she claimed that they are still in arrears in the amount of \$175.00 for the period ending 31 July 2020. The landlord is seeking an order for a payment of that amount.

Analysis

25. I accept the landlord's claim that the tenants had not paid rent as required. However, 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.
26. I calculate that the tenants have a credit of \$359.84cr to the date of the hearing (\$1175.00 for the period ending 30 June 2020, plus \$190.16 for July 2020 (\$725.00 per month x 12 months = \$8700.00 per year ÷ 366 days = \$23.77 per day x 8 days = \$190.16), less the payment of \$1725.00 made on 01 July 2020).

Decision

27. The tenants have a rent credit in the amount of \$359.84cr for the period ending 08 July 2020.
28. The tenants shall pay a daily rate of rent in the amount of \$23.77, beginning 09 July 2020, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 3: Late Fees - \$75.00

Issue 4: NSF Fees - \$75.00

Analysis

29. 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.*

(2) *Where a cheque for the payment of rent is returned to a landlord by a financial institution because of insufficient funds, the landlord may charge the tenant a fee in the same amount as the fee charged to the landlord by the financial institution.*

30. Regarding the late fees, 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.

31. The landlord's rent records show that the tenants have been in rental arrears since January 2020. I therefore find that she is entitled to a payment of the maximum late fee of \$75.00 set by the minister.

32. Her records also show that 3 cheques were returned to her by her bank for the reason of "non-sufficient funds" and the landlord testified that she was charged \$25.00 by her bank. I therefore find that she is also entitled to a payment of the \$75.00 included in her rent records.

Decision

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

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

Issue 5: Hearing Expenses

35. The landlord submitted a hearing expense claim form and receipts showing that she had paid a fee of \$20.00 to file this application and had paid \$22.10 to send the notice of the hearing to the tenants by registered mail. As the landlord's claim has been successful, the tenants shall pay these hearing expenses.

Summary of Decision

36. 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 \$23.77, beginning 09 July 2020 and continuing to the date the landlord obtains possession of the rental unit,
- The tenants 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.
- The tenants have a rent credit for the period ending 08 July 2020 in the amount of \$242.74cr, determined as follows:
 - a) Rent Credit.....\$359.84cr
 - b) LESS: Late Fees..... (\$75.00)
 - c) LESS: Hearing Expenses..... (\$42.10)
 - d) Total Credit\$242.74cr

20 July 2020

Date



John R. Cook
Residential Tenancies Tribunal