

Residential Tenancies Tribunal

Decision 20-0150-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 11:05 am on 15 July 2020 via teleconference.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED], hereinafter referred to as “the landlord”.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant”, 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 \$900.00,
 - 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 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 respondents fail to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondents' absence so long as he has been properly served.

8. The landlord submitted an affidavit stating that she had sent the notice of the hearing to the tenant by registered mail on 06 March 2020 and the associated tracking history shows that notice cards were left for the tenant indicating that the notice was available for pick-up at the Post Office, but it was never collected by the tenant.
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 tenant never did not receive notice of the hearing, as it was sent by registered mail on 06 March 2020, it is considered to have been served on 11 March 2020. 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.

Issue 1: Vacant Possession of the Rented Premises

Relevant Submissions

11. The landlord entered into a 1-year, fixed-term rental agreement with the tenant, commencing 01 June 2016, and a copy of that executed lease was submitted with her application. The current rent is set at \$900.00 per month and it is acknowledged in the rental agreement that the tenant had paid a security deposit of \$440.00.
12. 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 failed to pay his rent for February 2020 when it came due on the first day of that month.
13. Because the tenant had fallen into arrears, the landlord stated that she issued the tenant a termination notice on 13 February 2020 and a copy of that notice was submitted with her application.
14. 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.
15. 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

16. 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.

17. According to the landlord's rent records, on 13 February 2020 the tenant was in arrears in the amount of \$900.00 and had been in arrears since the beginning of that month. No payments were made by the tenant prior to the effective termination date set out in that notice.
18. As the tenant 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

19. The landlord's claim for an order for vacant possession of the rented premises succeeds.
20. 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.

Issue 2: Rent Owing - \$900.00

Relevant Submissions

21. According to the submitted rent records, the tenant eventually brought the balance down to zero in May 2020, when he paid to the landlord a double rent payment of \$1800.00.
22. However, the tenant again failed to pay his rent for June 2020. Rent for July 2020 was paid on 03 July 2020.

23. The landlord is seeking an order for a payment of rent in the amount of \$900.00.

Analysis

24. I accept the landlord's claim that the tenant had not paid rent for June 2020 as required. As the landlord has been granted 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.

25. I calculate the amount owing to be \$442.65 (\$900.00 owing for the period ending 30 June 2020, \$442.65 for July 2020 ($\$900.00 \text{ per month} \times 12 \text{ months} = \$10,800.00 \text{ per year} \div 366 \text{ days} = \$29.51 \text{ per day} \times 15 \text{ days} = \442.65), less the payment of \$900.00 paid on 03 July 2020.

Decision

26. The landlord's claim for a payment of rent succeeds in the amount of \$442.65.

27. The tenant shall pay a daily rate of rent in the amount of \$29.51, beginning 16 July 2020, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 3: Late Fees

Relevant Submissions

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

Analysis

29. 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.*

30. 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.

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

Decision

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

Issue 4: Hearing Expenses

33. 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 \$11.05 to send the notice of the hearing to the tenant by registered mail. As the landlord's claim has been successful, the tenant shall pay these hearing expenses.

Issue 5: Security Deposit

34. The landlord stated that the tenant had paid a security deposit of \$440.00 on 17 May 2016 and receipt of that deposit is acknowledged in the submitted lease. As the landlord's claim has been successful, she shall retain the security deposit as outlined in this decision and order.

Summary of Decision


35. The landlord is entitled to the following:

- An order for vacant possession of the rented premises,
- A payment of \$108.70, determined as follows
 - a) Rent Owing\$442.65
 - b) Late Fees\$75.00
 - c) Hearing Expenses.....\$31.05
 - d) **LESS: Security Deposit..... (\$440.00)**
 - e) Total Owing to Landlord\$108.70
- A payment of a daily rate of rent in the amount of \$29.51, beginning 16 July 2020 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.

17 July 2019

Date



John R. Cook
Residential Tenancies Tribunal