

Residential Tenancies Tribunal

Decision 20-0297-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:05 am on 14 October 2020 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “tenant” participated in the hearing. The respondent and landlord, [REDACTED], was represented at the hearing by [REDACTED] (“[REDACTED]”) and [REDACTED] (“[REDACTED]”).

Issues before the Tribunal

3. The tenant is seeking an order for a refund of the security deposit in the amount of \$937.50.
4. The landlord is seeking the following:
 - An order for a payment of rent in the amount of \$1250.00
 - An order for a payment of late fee in the amount of \$75.00, and
 - Authorization to retain the security deposit.

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 is section 18 of the *Residential Tenancies Act, 2018*.

Issue 1: Rent Owing - \$1250.00

Relevant Submissions

The Landlord's Position

7. The landlord and tenant entered into a 1-year, fixed-term rental agreement in May 2018 and on 01 June 2019 that lease was renewed for another 1-year term. A copy of that renewed lease was submitted with the landlord's application showing that the newly renewed term would end on 31 May 2020.
8. According to the submitted lease, the monthly rent was set at \$1250.00 and it is acknowledged in the lease that the tenant had paid a security deposit of \$937.50.
9. ■ stated that in March 2020 the tenant's leasing agent received a notice from the tenant indicating that she would be terminating her rental agreement at the end of the fixed-term, on 31 May 2020. ■ acknowledged, though, that the tenant had expressed, at that time, that, because of a medical condition which necessitates the use of a wheelchair, she would like to vacate the unit 1 month early, on 30 April 2020, as she had found a unit that was more suitable to her needs.
10. ■ stated that she had tried to accommodate the tenant's request and she pointed to her submitted evidence showing that she had immediately started advertising the unit for rent on 26 March 2020. She testified that she had placed advertisements on the website for her property management company, on Facebook, on Kijiji, on Zumper and on rental.ca. ■ claimed that, because of the COVID-19 pandemic, the tenant would not allow the landlord to bring potential renters to the apartment during April 2020 for viewings. As a compromise, she stated that they had taken a video of the unit and had conducted virtual viewings during that month instead and she pointed to a calendar showing the dates that viewings had been arranged. Despite those efforts, ■ stated that she was unable to secure a new tenant for May 2020.
11. ■ stated that after the tenant moved out at the end of April 2020, she did have some on-location viewings and she was able to rent the unit for June 2020.
12. ■ stated that the unit sat vacant for the month of May 2020 and she had suffered a loss of rental income during that month. She stated that although she had indicated to the tenant that she would try to find a new tenant for May 2020, she argued that the tenant is still responsible for rent for that month as the lease was not set to expire until the end of that month. The landlord is seeking an order for a payment of rent in the amount of \$1250.00.

The Tenant's Position

13. The tenant testified that she suffers from [REDACTED] and as a result has been in a wheelchair for the past several years. She also stated that her [REDACTED] has been progressing and it was becoming more difficult for her to reside at the rental unit.
14. The tenant stated that, for safety reasons, she was required to find a new apartment that was more accommodating to her disability (e.g., was barrier free, had grab-bars, etc.) and she stated that such a unit became available for 01 May 2020.
15. In support of her claim that she was required to move to accessible housing, the tenant submitted a letter from a nurse, [REDACTED], and an occupational therapist, [REDACTED]. [REDACTED] corroborates the tenant's claim that her mobility issues have changed and she urges the landlord to "come to a mutual compassionate decision" to allow the tenant out of her lease 1 month early so that she does not have to pay rent for 2 apartments in May 2020. In [REDACTED]'s letter, she outlines the housing requirements needed by the tenant because of her condition (wheel-in shower, grab bars, 36" wide doorways, etc.) and also corroborates the tenant's claim that such a unit had become available for May 2020.
16. The tenant testified that she had sent these letters to the landlord after she had requested that she be permitted to move out 1 month early.
17. Regarding the landlord's attempts to put a new occupant into her unit for May 2020, she claimed that there were no viewings of her apartment in March or April 2020 and she denied the landlord's claim that she would not permit viewing during that period. Rather, she pointed out that there were no viewings because of restrictions related to the COVID-19 pandemic.
18. The tenant stated out that she had lived at the unit for 3 years and she was a good tenant. She pointed out that she had even had a wheelchair ramp installed, and dismantled when she vacated, at her own cost. The tenant stated that, although she knew that she was in a lease that was not set to expire until the end of May 2020, she figured that as she had given the landlord 8 weeks' notice that she was vacating they would have acted compassionately and allowed her out of her lease 1 month early.

Analysis

19. Section 18 of the *Residential Tenancies Act, 2018* outlines the timeframe requirements tenants are supposed to abide by when terminating a rental agreement and subsection 18.(1)(c) states that the notice period is "not less than 2 months before the end of the term where the residential premises is rented for a fixed term". As the lease in this tenancy was not set to expire until 31 May 2020, the tenant could not, under normal circumstances, terminate her

agreement prior to that date, and she had to give the landlord at least 2 months' notice. A notice given in mid-March 2020, with an effective termination date of 31 May 2020, meets the requirements set out here.

20. However, despite the requirements just quoted in the previous paragraph, subsection 18.(8) of the *Act* does contemplate circumstances where a tenant may terminate her agreement, at any point during the lease, with just 1 month's notice. I quote:

Notice of termination of rental agreement

18. (8) *Notwithstanding that the notice period required under subsection (1) is longer than one month, a tenant and any other tenants in the same residential premises may terminate a rental agreement by giving one month's notice to the landlord under the following circumstances:*

(a) the tenant's income is reduced as a result of ill health and the notice to the landlord is accompanied by evidence of the tenant's reduction in income;

(b) the income of a person who has been providing financial assistance towards the payment of the tenant's rent is no longer able to provide financial assistance due to ill health and the notice to the landlord is accompanied by evidence of the ill health of the person who has been providing financial assistance;

(c) the tenant is required to reside with a family member because of the ill health of the family member and the notice to the landlord is accompanied by evidence of the ill health of the family member;

(d) the tenant is admitted permanently into a home that provides personal care for the aged and the notice to the landlord is accompanied by evidence of the tenant's admission into the home; or

(e) the tenant dies and the notice to the landlord is accompanied by evidence of the tenant's death.

21. Unfortunately for the tenant, none of the circumstances contemplated here in the *Act* meet her situation as she described it at the hearing. Nothing in the *Act* states that a tenant may break a lease, on 1-month's notice, if she finds housing that better accommodates her disability.
22. Accordingly, I have to conclude that, although the tenant had vacated her unit at the end of April 2020, she was nevertheless responsible for the unit up to 31 May 2020, including any rent that came due.

23. The landlord's evidence does show that they had attempted to accommodate the tenant by immediately advertising the unit for rent after she made it clear that she would not reside there during May 2020. The landlord's evidence also shows that, despite those attempts, they could not find a new occupant for May 2020 and the unit sat vacate during that period.
24. As the landlord received no rent for May 2020, either from the tenant or from any new occupant, I find that the tenant owes the landlord \$1250.00 for that month as the lease did not expire until the end of that month.

Decision

25. The landlord's claim for a payment of rent succeeds in the amount of \$1250.00 for the month of May 2020.

Issue 2: Late Fees

Relevant Submissions

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

Analysis

27. 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.*

28. 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.

29. 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

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

Issue 3: Security Deposit - \$937.50

31. The tenant paid a security deposit of \$937.50 when the tenancy began and receipt of that deposit is acknowledged in the submitted leases. As the landlord’s claim for rent and late fees has been successful, they shall retain that security deposit as outlined in this decision and attached order.

Issue 4: Hearing Expenses

32. The landlord paid a fee of \$20.00 to file this application. As the landlord’s claim has been successful, the tenant shall pay this hearing expense.

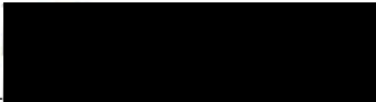
Summary of Decision

33. The landlord is entitled to the following:

- a) Rent Owing\$1250.00
- b) Late Fees\$75.00
- c) Hearing Expenses.....\$20.00
- d) LESS: Security Deposit..... (\$937.50)
- e) Total Owing to Landlord\$407.50

28 January 2021

Date



John R. Cook
Residential Tenancies Tribunal