

Residential Tenancies Tribunal

Decision 20-0315-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:03 am on 08 October 2020 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, participated in the hearing. The respondent, [REDACTED], hereinafter referred to as “the tenant”, did not participate.

Issues before the Tribunal

3. The landlord are seeking the following:
 - An order for a payment of rent in the amount of \$3450.00,
 - An order for a payment of late fees in the amount of \$75.00,
 - An order for compensation for damages in the amount of \$250.00,
 - An order for a payment of “other expenses” totalling \$205.00, and
 - Authorization to retain the \$500.00 security deposit.

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 decision is section 15 of the *Residential Tenancies Act, 2018*, policy 9-3: Claims for Damage to Rental Premises and Rules 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 a 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 served the tenant with notice of the hearing, by e-mail, on 23 September 2020 and a copy of that e-mail was also submitted with her application. The tenant has had 14 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.

Issue 1: Rent - \$3450.00

Relevant Submissions

7. The landlord stated that she had entered into a monthly rental agreement with the tenant in April 2015. The agreed rent was set at \$1050.00 and the landlord testified that the tenant had paid a security deposit of \$500.00.
8. The landlord stated that at the beginning of June 2020 she was informed by the occupants of the downstairs apartment that the tenant was in the process of moving her possessions out of the property. The landlord stated that she tried to contact the tenant about that matter but she could not reach her. The landlord took possession of the unit on 15 June 2020.
9. The landlord submitted rent records with her application showing the payments she had received from the tenant since November 2018. According to these records, prior to June 2020, there were 5 separate occasions where the tenant had failed to pay the full monthly rent. She owed \$50.00 for April 2019, \$50.00 for July 2019, \$750.00 for November 2019, \$1050.00 for December 2019 and \$500.00 for January 2020. Those arrears total \$2400.00.
10. The landlord stated that although the tenant moved on 01 June 2020, she received no notice from her that she was terminating her tenancy and because she had changed the locks on the door to the unit, she did not regain possession of the property until 15 June 2020. The landlord is also seeking an order for a payment of rent for June 2020 in lieu of a proper termination notice.

Analysis

11. I accept the landlord's testimony and evidence in this matter and I agree with her that the tenant had not been paying rent as required. Given that the tenant had not given her any notice that she was moving out of the property, I also agree with the landlord that she is entitled to rent up to 30 June 2020.
12. As the landlord's records show that the tenant owes \$3450.00 for the period ending 30 June 2020, her claim succeeds in that amount.

Decision

13. The landlord's claim for a payment of rent succeeds in the amount of \$3450.00.

Issue 2: Late Fees - \$75.00

Relevant Submissions

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

Analysis

15. 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.*

16. 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.

17. As the tenant has been in rental arrears since 02 April 2019, the landlord is entitled to an award for the maximum fee of \$75.00 set by the minister.

Decision

18. The landlords' claim for late fees succeeds in the amount of \$75.00.

Issue 3: Compensation for Damages - \$250.00

Relevant Submissions

19. The landlord stated that during her tenancy the tenant had moved a car into the backyard of the rented premises and she claimed that in order to get the car into

the yard, the tenant had to take down a section of the wooden fence. The tenant did not reinstall the fence after she put the car in the yard.

20. After the tenant moved out, the landlord hired someone, at a cost of \$250.00, to repair the fence. No receipt for that work was submitted at the hearing and no photographs were submitted showing the damage to the fence. The landlord stated that the fence was approximately 10 years old.

Analysis

21. I find that there was insufficient corroborating evidence presented at the hearing to establish the nature or the degree of the damage to the fence or to establish the costs to carry out the repairs (e.g. receipts). For those reasons, the landlord's claim does not succeed.

Decision

22. The landlord's claim for compensation for damages does not succeed.

Issue 4: Other Expenses - \$205.00

Relevant Submissions

23. The landlord stated that during her tenancy, the tenant had changed the locks to main entrance door but she had neglected to give the landlord a key. When the tenant moved out, she locked the keys in the apartment and the landlord had to break the lock to gain entry. That lock has since been replaced and the landlord is seeking \$50.00 for the costs of a replacement. No receipt was submitted at the hearing.
24. The landlord also complained that the tenant had left behind 65 dozen beer bottles at the unit which she was required to remove from the property as well as 17 bags of garbage. She also stated that there was a significant amount of garbage left at the property, including furniture and broken toys, and she claimed that the shed was also full of junk and garbage. The landlord testified that she had to make 5 separate trips to the dump to dispose of all of this garbage and she stated that it took her 8 hours to collect the garbage and make those dump runs. She is seeking \$155.20 in compensation for her personal labour to carry out that work (8 hours x \$19.40 per hour).

Analysis

25. I accept the landlord's claim that she was required to spend 8 hours collecting and disposing of garbage and beer bottles from the rental and I therefore agree with her that she is entitled to the \$155.20 she is claiming here. As no receipts were submitted for the costs of replacing the locks, that portion of her claim does not succeed.

Decision

26. The landlord’s claim for “other expenses” succeeds in the amount of \$155.20.

Issue 5: Security Deposit

27. The landlord stated that the tenant had paid a security deposit of \$500.00 in April 2015. As the landlords’ claim has been successful, she shall retain that security deposit as outlined in this decision and attached order.

Summary of Decision

28. The landlord is entitled to the following:

a) Rent.....	\$3450.00
b) Late Fees	\$75.00
c) “Other Expenses”	\$155.20
d) LESS: Security Deposit	(\$500.00)
e) Total Owing to Landlord	<u>\$3180.20</u>

03 February 2021

Date



John R. Cook
Residential Tenancies Tribunal