

Residential Tenancies Tribunal

Decision 20-0321-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:08 pm on 19 August 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 \$1250.00,
 - b. An order for a payment of late fees in the amount of \$150.00, 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. I was able to reach him by telephone and he informed me that he did not wish to participate in the hearing. 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. With his application, the landlord had submitted an affidavit stating that the tenant was served with notice of the hearing, by a process server, on 04 August 2020 and he 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 his absence.

8. The landlord amended his application at the hearing and stated that he was now seeking an additional \$875.00 in rent for a total claim of \$2125.00.

Issue 1: Rent Owing - \$2125.00

Relevant Submissions

9. The landlord entered into a 1-year, fixed-term rental agreement with the tenant, commencing 01 December 2019, and a copy of that executed lease was submitted with his application. The agreed rent was set at \$875.00 per month and it is acknowledged in the lease that the tenant had paid a security deposit of \$450.00.
10. The landlord submitted rent records showing the payments she had received from the tenant since he had moved into the rented premises. According to these records, the tenant had only paid \$500.00 in rent for June 2020, leaving a balance of \$375.00 for that month. No payments have been received for July or August 2020.
11. The landlord is seeking an order for a payment of rent in the amount of \$2125.00.

Analysis

12. I accept the landlord's claim that the tenant had not paid rent as required. As the landlord is also seeking an order for vacant possession of the rented premises, I find that he is entitled to a payment of rent to the date of the hearing and a per diem thereafter.
13. I calculate that the tenant owes \$1795.11 (\$1250.00 owing for the period ending 31 July 2020 (\$375.00 + 875.00) and \$545.11 for August 2020 (\$875.00 per month x 12 months = \$10,500.00 per year ÷ 366 days \$28.69 per day x 19 days = \$545.11)).

Decision

14. The landlord's claim for a payment of rent succeeds in the amount of \$1795.11.

15. The tenant shall pay a daily rate of rent in the amount of \$28.69, beginning 20 August 2020, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Late Fees - \$150.00

Analysis

16. The landlord has assessed late fees in the amount of \$150.00.

Analysis

17. 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.*

18. 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.

19. 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

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

Issue 3: Vacant Possession of the Rented Premises

Relevant Submissions

21. With his application, the landlord had submitted 6 termination notices he had issued to the tenant. The most recent notice was issued on 06 August 2020.

The landlord stated that he had posted that termination notice to the tenant's door on 06 August 2020 and he had also sent it to him by e-mail.

22. This termination notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 17 August 2020.
23. The landlord stated that the tenant has not vacated the rented premises as required and he is seeking an order for vacant possession.

Analysis

24. 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.

25. According to the landlord's rent records, on 06 August 2020 the tenant was in arrears in the amount of \$2125.00 and had been in arrears since the beginning of June 2020. No payments were made by the tenants prior to the effective termination date set out in that notice.
26. As the tenant had not paid off the arrears prior to 17 August 2020 and as the notice meets the timeframe requirements set out in section 19 of the *Act*, it is a valid notice.

Decision

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

28. 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 4: Security Deposit

29. The landlord stated that the tenant had paid a security deposit of \$450.00 on 15 November 2019 and receipt of that deposit is acknowledged in the submitted lease. As the landlord's claim has been successful, he shall retain the security deposit as outlined in this decision and order.

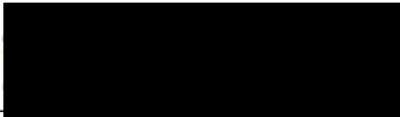
Summary of Decision

30. The landlord is entitled to the following:

- A payment of \$1420.11, determined as follows:
 - a) Rent Owing\$1795.11
 - b) Late Fees\$75.00
 - c) LESS: Security Deposit..... (\$450.00)
 - d) Total\$1420.11
- An order for vacant possession of the rented premises,
- A payment of a daily rate of rent in the amount of \$28.69, beginning 20 August 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.

27 August 2020

Date



John R. Cook
Residential Tenancies Tribunal