

Residential Tenancies Tribunal

Decision 20-0324-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:06 pm on 15 July 2020 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, participated in the hearing.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant”, did not participate.

Issues before the Tribunal

4. The landlord is seeking the following:
 - a. An order for a payment of rent in the amount of \$1500.00,
 - 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* and rule 29 of the Rules of the Supreme Court, 1986.

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 respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as he has been properly served. The landlord submitted an affidavit with his application stating that he had served the tenant by registered mail and the associated tracking history shows that the notice was delivered on 15 July 2020. The tenant has had 61 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.

Issue 1: Rent - \$1500.00

Relevant Submissions

8. The landlord stated that he had entered into a monthly rental agreement with the tenant on 13 December 2019. The agreed rent was set at \$750.00 per month and the landlord stated that the tenant had paid a security deposit of \$375.00. The tenant's rent was paid on his behalf by the Department of Advanced Education, Skills and Labour (AESL).
9. The landlord submitted rent records with his application and he pointed out that no rent was paid for the months of February and March 2020. Since then, he has been receiving the required monthly rent on time, but no attempt has been made to pay down the accumulated arrears of \$1500.00 (\$750.00 per month x 2 months).
10. The landlord is seeking an order for a payment of rent in the amount of \$1500.00.

Analysis

11. I accept the landlord's claim that the tenant had not paid rent for February or March 2020, as required. As the landlord is 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.
12. I calculate the amount owing to be \$1118.85 (\$1500.00 owing for the period ending 31 August 2020, \$368.85 for September 2020 (\$750.00 per month x 12 months = \$9000.00 per year ÷ 366 days = \$24.59 per day x 15 days = \$368.85), less the payment of \$750.00 paid by AESL for September 2020).

Decision

13. The landlord's claim for a payment of rent succeeds in the amount of \$1118.85.

14. The tenant shall pay a daily rate of rent in the amount of \$24.59, beginning 16 September 2020, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Late Fees

Relevant Submissions

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

Analysis

16. 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.*

17. 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.

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

Decision

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

Issue 3: Vacant Possession of the Rented Premises

Relevant Submissions

20. With his application, the landlord submitted a copy of a termination notice which he stated he had personally delivered to the tenant on 10 July 2020. He also

testified that he had also sent that notice to the tenant by registered mail on 11 July 2020.

21. This termination notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 28 July 2020.
22. The landlord is seeking an order for vacant possession of the rented premises.

Analysis

23. 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.

24. According to the landlord's rent records, on 10 July 2020 the tenant was in arrears in the amount of \$1500.00 and had been in arrears since 02 February 2020. Although the landlord continued to receive the monthly rent, no attempt has been made to pay off the arrears that had accumulated in February and March 2020.
25. As the termination notice meets the timeframe requirements set out in section 19 of the *Act*, it is a valid notice.

Decision

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

28. As the landlord's claim has been successful, the tenant shall pay his hearing expense of \$20.00 for the costs of filing this application.

Issue 5: Security Deposit

29. The landlord stated that the tenant had paid a security deposit of \$375.00 on 13 December 2019. 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:

- An order for vacant possession of the rented premises,
- A payment of \$838.85, determined as follows:
 - a) Rent Owing\$1118.85
 - b) Late Fees\$75.00
 - c) Hearing Expenses.....\$20.00
 - d) **LESS: Security Deposit..... (\$375.00)**
 - e) Total Owing to Landlord\$838.85
- A payment of a daily rate of rent in the amount of \$24.59, beginning 16 September 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 September 2019

Date

John R. Cook
Residential Tenancies Tribunal