

Residential Tenancies Tribunal

Decision 20-0561-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:03 pm on 16 February 2021 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”, also participated.

Issues before the Tribunal

3. The landlord is seeking the following:
 - A determination of the validity of a termination notice issued to her,
 - An order for compensation for inconvenience in the amount of \$791.94,
 - An order for a payment of rent in the amount of \$2685.00,
 - An order for a payment of late fees in the amount of \$75.00,
 - An order for a payment of utilities in the amount of \$319.35, and
 - Authorization to retain the \$671.25 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 case is section 10 and 15 of the *Residential Tenancies Act, 2018*.

Background

6. The following facts do not seem to be in dispute.

7. The landlord and tenant had entered into a 1-year, fixed-term rental agreement on 01 October 2020. A copy of the executed lease was submitted with the landlord's application (█ #1). The agreed monthly rent was set at \$895.00 and it is acknowledged in the lease that the tenant had paid a security deposit of \$671.25.
8. On 19 October 2020, the tenant sent a text-message to the landlord informing her that he would be moving in with his girlfriend and that he was looking to sublet the apartment or assign the lease.
9. The landlord stated that she had used █, a property management company, to screen potential renters for her for this apartment in the past and it was agreed that the tenant would also work with █ to screen any potential new renters that the tenant was able to line up.
10. On 21 October 2020 the tenant informed the landlord that he had found someone to move into the property and he expressed to her that this person was an ideal candidate to take over his lease. On 22 October 2020, the landlord informed the tenant that she had a meeting scheduled with █ on 23 October 2020. As a result of that meeting, the tenant was instructed to have the new renter fill out a rental application and have it sent to █ so that he could be screened. That application was completed and sent to █ on 24 October 2020.
11. On 27 October 2020, █ contacted the tenant and informed him that he also needed to enter into a Placement Agreement with them (a contract whereby the tenant would pay that management company a fee for their screening services) in order for them to complete their screening of the new renter the tenant had found.
12. The tenant entered into that Placement agreement with █ and on 28 October 2020 they made contact with the potential renter regarding his application. However, they were informed by him that he had already found a different apartment and would not be taking over the tenant's lease.
13. The tenant vacated the property at the beginning of November 2020, and he had agreed with █ that their management company would seek a new renter on his behalf. Although he was no longer residing there, the tenant paid the rent for November 2020 while a search was being carried out by █.
14. On 18 November 2020, the tenant contacted both the landlord and █ and expressed his dissatisfaction at █'s progress in securing a new renter and expressed his frustration in the fact that █ was not returning his calls. The tenant informed the landlord on that date that he would no longer pay any more rent for the rental unit and at the beginning of December 2020, the landlord entered and took possession, after posting a Notice of Abandonment.

Issue 1: Validity of Notice

Issue 2: Rent - \$2685.00

Relevant Submissions

The Landlord Position

15. The landlord stated that, to the date of the hearing, the rental unit has sat vacant and she has collected no rental income since 01 December 2020.
16. The landlord argued that as the tenant had entered into a 1-year, fixed-term lease with her that was not set to expire until the end of September 2021, he is responsible for the rent up that expiration date.
17. She acknowledged that there was an opportunity for someone to possibly take over the lease in October 2020, but she claimed that she had done nothing wrong in having that potential renter complete a rental application with [REDACTED] so that he could be screened. She pointed out that she had been using [REDACTED] to screen her renters for the past couple of years and there was no reason for her to change that practice in this case.
18. She also argued that there were no deliberate or undue delays between the time that the tenant informed her that he had found a potential renter—21 October 2020—and the date when that person notified [REDACTED] that he had decided to accept a different apartment—28 October 2020. She pointed to her text-message exchanges with the tenant during that period ([REDACTED] #2) to corroborate that claim.
19. The landlord stated that although she had yet to secure a new tenant, [REDACTED] had been actively advertising her unit for rent and she submitted several sample advertisements from Kijiji ([REDACTED] #3, #4, #5, #6), Marketplace ([REDACTED] #7) and [REDACTED] [REDACTED]'s own rentboard ([REDACTED] #8) to corroborate her claim.
20. The landlord is seeking an order for the loss of rental income she suffered for the period from 01 December 2020 to 28 February 2021.

The Tenant's Position

21. The tenant pointed out that under the *Residential Tenancies Act, 2018* he had a right to sublet the apartment or to assign his lease and the landlord is not permitted to “arbitrarily or unreasonably withhold consent”.
22. He argued that the landlord was too particular about who she would allow to rent her apartment and he also claimed that her insistence that he engage [REDACTED] to screen the person he had found had caused unnecessary delays. Had she agreed to sign a new lease with that person on 21 October 2020, as he had hoped, she would not have suffered any loss of rental income and he would not have had to pay rent for November 2020.

23. He stated that [REDACTED]'s requirement that the potential renter fill out a rental application on 24 October 2020 and then that he had to fill out a Placement Agreement on 27 October 2020 frustrated his attempt to assign the lease as the potential renter felt as if [REDACTED] were "giving him the runaround". Because of those delays, that potential renter was concerned he would not be able to move into the property by 01 November 2020 and he had to resort to seeking a different apartment.
24. And after that renter had backed out, the tenant argued that [REDACTED] had not taken any steps to re-rent the unit on his behalf. He claimed that he had been routinely monitoring rental sites on the internet and there were no postings from [REDACTED] for this property. He acknowledged that it had been posted on [REDACTED]'s website, but he claimed that no one knows to check that webpage for apartment listings and that most people use Kijiji or Buy & Sell.
25. The tenant also pointed out that after he had posted his advertisement on 18 October 2020, he got numerous responses and had found a potential renter within a day. According to the tenant, he was informed by [REDACTED] that they had had 300 inquiries about the rental property after he moved out. He argued that the selection criteria must be too strict and unreasonable if they were unable to find a single new renter out of that group.
26. The tenant stated that he had paid for rent for November 2020, even though he was no longer residing there, and he also stated that he was willing to forfeit the security deposit. He argued that he had been more than reasonable and that had the landlord hired a more competent management company, she could have had new tenants in place for November 2020.
27. The tenant argued that it was because of delays in processing the potential renter he had found in October 2020, because of the ineffectiveness of [REDACTED] and because of the landlord's overly stringent selective criteria that no new tenant had yet been put in the unit. He argued that none of that was his fault and he shouldn't be held responsible for the loss of rental income suffered by the landlord.

Analysis

28. Statutory condition 3., found in section 10 of the *Residential Tenancies Act, 2018*, states

Statutory conditions

10. (1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:

...

3. Assigning or Subletting Residential Premises - *The tenant may assign or sublet the residential premises subject to the written consent of the landlord, and the landlord shall not arbitrarily or unreasonably withhold consent and shall not levy a charge in excess of expenses actually incurred by the landlord in relation to giving consent.*

29. I find that the landlord had given consent to the tenant to assign his lease and they both agreed that the tenant would work with ██████ to screen any potential applicants. As it was the landlord's past practice to use that company to screen new renters for her, in requesting that the tenant also use that same property management to assist in screening and finding an assignee, she was not acting arbitrary or unreasonable.
30. Although I agree with the tenant that if everyone had acted with more haste, it is possible that the renter he had found on 21 October 2020 could have taken over his lease. However, I do also agree with the landlord that the delays associated with having that potential renter complete a rental application and having the tenant enter into a placement contract with ██████ were reasonable requests and the fact that it took a week to have those matters addressed does not seem unusual to me. In that respect, then, I find that although the actions of the landlord and ██████ were not perfect, insofar as they lost out on securing a new renter in October 2020, their actions were not unreasonable and nothing in what transpired during that period should be construed as "arbitrarily or unreasonably withholding consent".
31. As an assignee had not been found in October and November 2020, I find that by vacating the premises and refusing to pay rent after November 2020, the tenant was in contravention of the notice requirements of his lease. That lease was not set to expire until 30 September 2021 and the tenant could not terminate that agreement prior to that date. That is, the tenant's notice that he would no longer pay any rent to the landlord is not a valid termination notice.
32. As his agreement had not been properly terminated and as the tenant paid no more rent after 30 November 2021, he is considered to have abandoned the property. Statutory condition 4, set out in section 10 of the *Residential Tenancies Act, 2018* states:

4. Mitigation on Abandonment - *Where the tenant abandons the residential premises, the landlord shall mitigate damages that may be caused by the abandonment to the extent that a party to a contract is required by law to mitigate damages.*

That is, where a landlord will likely suffer a loss of rental income as a result of the tenant abandoning the unit, the landlord must take all reasonable steps to minimize those losses, and those steps typically consist of advertising the property for rent in an attempt to find new paying renters as soon as possible.

33. I find that the landlord had mitigated her damages in that she had hired [REDACTED] to secure a new tenant for her after the tenant moved out and had informed her that he would no longer pay rent. Again, as it was the landlord's past practice to hire that company to secure and screen potential renters for her rental property, in returning to that same practice, she had not acted unreasonably. The landlord's evidence also shows that that company had been widely advertising the unit for rent.
34. I conclude, then, that as the landlord had not unreasonably prevented the tenant from assigning his lease and as she had mitigated her lost rental income by hiring a property management company to secure a new tenant for her, she had met the obligations she owed to the tenant after he informed her that he wanted to break his lease.
35. As that lease was not set to expire until 30 September 2021, I find that the tenant is still responsible for his obligation to pay rent, up to the date the landlord is able to put a new tenant in place. As of the date of the hearing, the landlord testified that unit is still vacant and I therefore find that the tenant owes the landlord \$2301.43 (\$895.00 for each of December 2020 and January 2021 and \$511.43 for February 2021 ($\$895.00 \div 28 \text{ days} \times 16 \text{ days}$)).

Decision

36. The tenant did not terminate his rental contract in accordance with the *Residential Tenancies Act, 2018*.
37. The landlord's claim for compensation for lost rental income succeeds in the amount of \$2301.43.

Issue 3: Late Fees

Relevant Submissions

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

Analysis

39. 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.*

40. 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.

41. As the tenant first fell into rental arrears on 02 December 2020, the landlord is entitled to an award for the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 4: Utilities - \$319.35

Relevant Submissions

The Landlord's Position

43. With her application, the landlord submitted a letter from Newfoundland Power (█ #9) showing that the tenant had his electricity account closed on 30 November 2020 and the account reverted back to the landlord's name on that date.
44. The landlord also submitted a bill from Newfoundland Power for the month of December 2020 (█ #10) showing that she was charged \$99.71 for that month and a second bill (█ #11) showing that she was charged \$112.64 for January 2021. She estimated that she would be charged an additional \$107.00 for the month of February 2021.
45. The landlord argued that as the tenant was responsible for paying his own utilities, and as he was responsible for those utilities up to the expiration date of the lease, 30 September 2021, she is entitled to a payment of \$319.95 for the electrical charges billed to her for the period ending 28 February 2021.

The Tenant's Position

46. The tenant complained that these charges were excessive and he questioned whether the landlord had the heat on high temperature at the unit after he vacated.

Analysis

47. Base of the reasoning set out in sections 1 and 2, I also find that the tenant is responsible for the utility charges up to the date of the hearing.
48. Basing February's charges on the charges from January 2021, I calculate the tenant owes \$265.32 (\$99.71 for December 2020, \$112.64 for January 2021 and \$52.97 for February 2021 (684 kWh over 29 days = 23.59 kWh per day x 16 days x \$0.12203 per kWh = \$46.06 x HST)).

Decision

49. The landlord's claim for a payment of utilities succeeds in the amount of \$265.32

Issue 5: Compensation for Inconvenience - \$791.94

Relevant Submissions

The Landlord's Position

50. The landlord stated that [REDACTED] has not yet found a new renter for her apartment, but she testified that she had entered into a property management agreement with them such that when a new renter is secured, she will be charged \$671.25, an amount equivalent to the security deposit.
51. That amount has not yet been paid and no receipt was submitted with her application. No copy of her contract with [REDACTED] was submitted either.

The Tenant's Position

52. The tenant argued that [REDACTED] is not doing an adequate job in securing a new renter for the landlord and he claimed that she is "not getting value for her dollar".

Analysis

53. The landlord has failed to establish that she would be charged that fee to have [REDACTED] secure a new renter for her after the unit was abandoned. Furthermore, as of the date of the hearing, that is not a cost that the landlord has actually incurred. As such, this claim does not succeed.

Decision

54. The landlord's claim for compensation for inconvenience does not succeed.

Issue 6: Security Deposit

55. The tenant paid a security deposit of \$671.25 on 09 September 2020 and receipt of that deposit is acknowledged in the submitted lease. As the landlord’s claim has been successful, she shall retain that security deposit as outlined in this decision and attached order.

Issue 7: Hearing Expenses

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


Summary of Decision

57. The landlord is entitled to the following:

- Lost Rent \$2301.43
- Late Fees \$75.00
- Utilities 265.32
- Hearing Expenses \$20.00
- LESS: Security Deposit (\$671.25)
- Total Owing to Landlord \$1990.50

14 May 2021

Date


 John R. Cook
 Residential Tenancies Tribunal