

Residential Tenancies Tribunal

Decision 19-0099-01

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:50 pm on 16 January 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”, also participated.

Issues before the Tribunal

3. The landlord is seeking the following:
 - a. A determination of the validity of a termination notice issued to him,
 - b. An order for a payment of rent in the amount of \$745.00,
 - c. An order for a payment of late fees in the amount of \$75.00,
 - d. An order for a payment of \$19.40 for the costs of garbage removal, and
 - e. Authorization to retain the security deposit of \$300.00.

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 21 of the *Residential Tenancies Act, 2018*.

Issue 1: Validity of Termination Notice

Issue 2: Rent - \$745.00

Relevant Submissions

The Tenant's Position

6. The landlord and tenant entered into 1-year, fixed-term rental agreement on 16 November 2018 and a copy of that lease was submitted at the hearing (TC #1). The lease was to commence on 01 December 2018 and the agreed rent was set at \$700.00 per month.
7. The tenant stated that she was not able to take possession of the rented premises on 01 December 2018 as she was locked into an Airbnb contract. She claimed that the landlord was aware of her situation and he informed her that in the first few weeks of December 2018 he would be carrying out some work on the property, including cleaning and painting.
8. The tenant received the keys from the landlord on 20 December 2018 and entered the apartment. The tenant stated that the unit was filled with garbage and she claimed that there was a strong odor of cat urine in the apartment. She also testified that there was an old mattress and broken box spring left behind and she discovered that there were bed bugs on them.
9. Because of the condition of the unit, she immediately contacted the landlord and informed him that she would not be moving into the property. The tenant also stated that she had sent photographs and a video to the landlord showing the bugs that she had discovered. She testified that she slept at her office that night.
10. The tenant argued that because the unit was not ready for her to move into and because of the issue with the bed bugs, she considered the apartment to be uninhabitable and she was not under any obligation to pay rent for December 2018.

The Landlord's Position

11. The landlord denied that there was any garbage left at the unit. He stated that he had left a box of kitchen utensils at the apartment as well as a dresser and he informed the tenant that if she had no use for them, she could dispose of them. He also stated that there was no smell of cat urine and claimed that there was only an unopened box of kitty litter in the hallway.
12. Regarding the bed bugs, the landlord stated that he found no bugs at the unit after the tenant vacated. He acknowledged that the tenant had sent him photographs and videos, but he stated that they were close-ups and could have been taken anywhere. He also pointed out that the tenant had presented no evidence at the hearing to establish that there were bedbugs at the rental unit.
13. The landlord argued that as the tenant has failed to provide evidence that there were bed bugs in the unit and as she had not issued him any written termination notice, she was still required to pay rent for December 2018.

Analysis

14. Where a party asserts the existence of some fact or asserts that some action had taken place, they have the burden of establishing the likelihood of their claim. As it is the tenant who is asserting that the rental unit was uninhabitable because of the presence of bed bugs, that burden falls to her.
15. The only evidence presented to the Board in this case was the contradicting testimony of the landlord and the tenant. The tenant claims that there were bedbugs found at the rental unit, while the landlord denies that there were any. With no other submitted evidence to allow me to make a determination one way or the other, I have to conclude that the tenant had not met her burden of proof.
16. As the tenant had not established, on the balance of probabilities, that the rental unit was uninhabitable, I find that the landlord is entitled to rent for December 2018.

Decision

17. The landlord's claim for a payment of rent succeeds in the amount of \$700.00.

Issue 2: Late fees - \$75.00

Relevant Submissions

The Landlords' Position

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

Analysis

19. 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.*

20. 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.

Decision

21. As the tenant has been in arrears since 02 December 2018, the landlord is entitled to an award for the maximum fee of \$75.00 set by the minister.

Issue 3: Garbage Removal - \$19.40

Relevant Submissions

The Landlord's Position

22. The landlord stated that the tenant had left behind a blanket at the rental unit after she vacated on 20 December 2018. He is seeking compensation in the amount of \$19.40 for the 1 hour it took him to remove that blanket.

The Tenant's Position

23. The tenant stated that she left the blanket behind because she was afraid bedbugs may have gotten onto it and she did not want to bring bedbugs with her after she left the apartment.
24. The tenant also argued that it would not take an hour to remove a blanket and she pointed out that there was already garbage at the apartment that the landlord had to dispose of.
25. Additionally, she argued that the landlord had not removed the blanket at all. She stated that in an advertisement posted by the landlord, which she viewed 2 months after she vacated, her blanket is visible in a photograph showing the bedroom.

Analysis

26. I find this portion of the landlord's claim to be frivolous—I don't see how he expects someone to believe it would take an hour to remove a blanket from an apartment.

Decision

27. The landlord's claim for the costs of garbage removal does not succeed.

Issue 4: Security Deposit

28. The tenant paid a security deposit of \$300.00 on 21 November 2018 and receipt of that deposit is acknowledged in the submitted lease. As the landlord's claim has been successful, he shall retain that security deposit as outlined in this decision and attached order.

Issue 5: Hearing Expenses

29. 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.

Summary of Decision

30. The landlord is entitled to the following:

- a) Rent Owing\$700.00
- b) Late Fees\$75.00
- c) Hearing Expenses.....\$20.00

- d) LESS: Security Deposit..... (\$300.00)

- e) Total Owing to Landlord\$495.00

28 April 2020

Date


John R. Cook
Residential Tenancies Tribunal