

Residential Tenancies Tribunal

Application 2022 No. 504NL

Decision 22-0504-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:07 AM on 27 July 2022 via teleconference.
2. The applicant, [REDACTED] was represented at the hearing by [REDACTED], hereinafter referred to as "the landlord".
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as "tenant1" and "tenant2", respectively, also participated.

Issues before the Tribunal

4. The landlord is seeking the following:
 - An order for a payment of rent in the amount of \$11,110.57,
 - An order for a payment of late fees in the amount of \$75.00,
 - An order for a payment of "other" expenses in the amount of \$4800.00,
 - An order for vacant possession of the rented premises, and
 - Authorization to retain the \$1300.00 security deposit.

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 landlord amended his application at the hearing and stated that he was now seeking a total claim of rent in the amount of \$13,710.00 and “other” expenses totalling \$5600.00.

Issue 1: “Other” Expenses - \$5600.00

Relevant Submissions

The Landlord’s Position

8. With his application, the landlord submitted a copy of the rental agreement he had entered into with the tenants, showing that this tenancy was to commence on 20 March 2021. The agreed rent was set at \$1300.00 per month and it is acknowledged in the agreement that the tenants had paid a security deposit of \$1300.00 as well.
9. The landlord pointed out that the second paragraph of this agreement reads:

*The landlord will rent on a monthly basis, a 3 bedroom house at [REDACTED]
[REDACTED] Also a 2 bedroom apt.*

And on the last page of the rental agreement, where the other conditions of the agreement are listed, it reads:

If the basement apartment is rented, an additional rent will be agreed on & paid to the landlord.

The landlord stated that there was a 2 bedroom basement apartment in the house which the tenants were not supposed to be using or occupying. He stated that both he and the tenants agreed that they would try to find renters for that unit, and if renters were found, he would be their landlord and they would pay rent to him.

10. The landlord complained that the tenants had been using that basement apartment and he stated that the tenants had rented out several rooms to different people during their tenancy, and none of the rent they collected had been turned over to him.
11. The landlord also claimed that he had several people who were interested in renting that apartment, but the tenants refused him access to the unit.
12. The landlord stated that he could have put someone into that basement apartment 7 months ago, with a monthly rent of \$800.00. He is seeking \$5600.00 in compensation for the loss of rental income he suffered for that period.

The Tenants' Position

13. Tenant1 stated that the rental agreement clearly states that they were renting the whole house, including the basement apartment, for \$1300.00 a month. He pointed out that the agreement does not state that he was not allowed to use or occupy that apartment and he testified that the landlord provided them with keys to that unit when he moved in.
14. Tenant1 also pointed out that the second clause in the agreement states additional rent would only be charged if the apartment was rented. But he denied that that unit was rented. He stated that his son had moved in with them after this tenancy began, and he was using one of the rooms in the apartment. But he claimed that the sole reason why he had moved from the 2-bedroom unit he had previously rented from the landlord, to this whole house, was because he needed more space.
15. Tenant1 did acknowledge that he did have one person lined up to rent a room in the basement apartment. But he stated that that person only lived there for 2 weeks and he received no rent from him.
16. Tenant1 also stated that on 13 June 2022, the landlord instructed him to vacate the basement apartment, and he claimed that that part of the house is now vacant and his son is sleeping on a couch in the upstairs unit.

Analysis

17. I agree with the tenants that the rental agreement that they had entered into states that they are renting both the upstairs, 3-bedroom unit, as well as the basement apartment, for a total rent of \$1300.00. And I agree with tenant1 that there is nothing in the agreement that states that the tenants are prohibited from using that unit. Given that the tenants were renting the whole house, I find that the landlord is not entitled to compensation for any loss of rent he could have collected had he rented that basement apartment. It was not his to rent out any longer after the tenants moved in.
18. The second clause in the agreement indicates that the tenants may rent out the basement, in which case a new agreement on rent would have to be negotiated. But that clause is conditional. If the tenants decided not to rent the basement unit, then I do not believe the landlord has a claim for additional rent. No evidence was presented by the landlord to show that the tenants had rented out the basement apartment, or to establish that they had collected any rent for the use of that apartment. For those reasons, the landlord's claim does not succeed.

Decision

19. The landlord's claim for "other" expenses does not succeed.

Issue 2: Rent - \$13,710.57

Relevant Submissions

The Landlord's Position

20. With his application, the landlord submitted rent records showing the payments the tenants had made since they had moved into the unit.
21. These records show that the tenants have been residing at the unit for a total now of 17 months and during that time they have only made 7 rent payments, totalling \$8389.43. The records show that since February 2022, no payments have been made whatsoever.
22. The landlord calculates that, based on the rent that they were supposed to have paid, \$22,100.00 (17 months x \$1300.00 per month), less the amount actually collected, the tenants owe \$13,710.57.

The Tenants' Position

23. Tenant1 claimed that the rent ledger submitted by the landlord is not a legally binding document. He pointed out that it is not stamped, it is not dated, there is no signature on it, and it does not contain any bank statements. Tenant1 claimed that anyone could write up such a ledger, and intimated that such a ledger does not prove that the amount stated is actually owed.
24. Tenant1 claimed that they had made more payments to the landlord than those recorded in the ledger, though he could not recollect when those payments were made. He pointed out that during this tenancy he had switched banks and he no longer had access to his payment records from his previous bank.
25. Tenant1 acknowledged that he had not been paying rent since 13 June 2022, but he stated that that was because the landlord had told him not to use the basement apartment. Since he was paying \$1300.00 a month for the whole house, he claimed that he did not know how much to pay the landlord anymore for rent as he no longer had use of the other apartment.
26. Although the landlord's records show that no payments have been made since January 2022, Tenant1 claimed that he had paid the full rent for February, March and May 2022, and he claimed that he had made a partial payment of \$600.00 in April 2022. He stated that the payments were made by e-mail money transfer (EMT).
27. Tenant1 acknowledged that they owe rent for about 4 or 5 months, but he argued that they do not owe as much as the landlord is claiming here.

Analysis

28. The landlord's records show that the tenants are currently in rental arrears in the amount of \$13,710.57 for the period ending 18 August 2022, and I found the landlord's testimony on this matter to be credible.
29. The tenants stated that they had made more payments to the landlord than those recorded in the ledger, but, except for the last 5 months, they were unable to provide the dates that those payments were made or to state the amounts of the payments that they had made.
30. Tenant1 claimed that they had paid \$4500.00 to the landlord since February 2022, contrary to what is shown in his records, but no evidence of those payments were submitted prior to, or during, the hearing (e.g., EMT receipts, etc.). As the burden of proof lies with the party who asserts that a payment had been made, I find that the tenants have failed to meet that burden. On the balance of probabilities, I find that the tenants owe \$13,710.57 for the period ending 18 August 2022.
31. 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. I calculate the amount owing to be \$12,795.23 (\$12,410.57 for the period ending 18 July 2022 and \$384.66 for the rental period commencing 19 July 2022 (\$1300.00 per rental period x 12 rental periods per year = \$15,600.00 ÷ 365 days = \$42.74 per day x 9 days)).

Decision

32. The landlord's claim for a payment of rent succeeds in the amount of \$12,795.23.
33. The tenants shall pay a daily rate of rent in the amount of \$42.74, beginning 28 July 2022, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 3: Late Fees - \$75.00

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

Analysis

35. Section 15 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.

The minister has prescribed the following:

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.*

36. As the tenants has been arrears since 2021, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 4: Vacant Possession of Rented Premises

Relevant Submissions

The Landlord's Position

38. With his application, the landlord submitted a copy of a termination notice which he stated was sent to the tenants, by text-message, on 14 June 2022, and a copy of his text-message exchanges was also submitted with his application. That notice was issued under section 19 of the *Residential Tenancies Act, 2018*, and it had an effective termination date of 25 June 2022.

39. The landlord stated that the tenants have not moved out, as required, and he is seeking an order for vacant possession of the rented premises.

The Tenant's Position

40. Tenant1 acknowledged that he had received the termination notice, but he claimed that he had received it after 4:00 PM on 14 June 2022.

Analysis

41. 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.

(2) Notwithstanding subsection (1), where the tenant pays the full amount of the overdue rent, including a fee under section 15, before the date specified in the notice under paragraph (1)(a) or (b), the rental agreement is not terminated and the tenant is not required to vacate the residential premises.

42. According to the copy of the text-message exchanges submitted with the landlord's application, the termination notice was sent to the tenants on 14 June 2022 at 11:20 AM, and the tenants responded to that notice just 15 minutes later, at 11:35 AM. I am satisfied that the notice was properly sent on 14 June 2022 and that it was sent prior to 4:00 PM, contrary to Tenant1's testimony.
43. According to the landlord's records, on 14 June 2022, the day the termination notice was issued, the tenants were in arrears in the amount of \$11,110.57, and had been in arrears since April 2021. According to the landlord's records, which I accept, no payments were made after the notice was issued and since then rent for rental periods beginning 18 June and 18 July 2022 has come due.
44. As the notice meets all the requirements set out in this section of the Act, and as it was properly served, it is a valid notice

Decision

45. The landlord's claim for an order for vacant possession of the rented premises succeeds.
46. The tenants 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 5: Hearing Expenses

47. With his application, the landlord submitted a hearing expense claim form and a receipt showing that he had paid \$20.00 to file this application and a receipt showing that he had paid \$26.89 to send the application to the tenants by registered mail. As his claim has been successful, the tenants shall pay these hearing expenses.

Issue 6: Security Deposit

48. The landlord stated that the tenants had paid a security deposit of \$1300.00 when they were living at their previous unit, and that amount was retained by him for this tenancy when it began in 2021. That deposit is also acknowledged in the submitted rental agreement. As the landlord's claim has succeeded, he shall retain that deposit as outlined in this decision and attached order.

Summary of Decision

49. The landlord is entitled to the following:

- A payment of \$11,617.12, determined as follows:
 - a) Rent Owing\$12,795.23
 - b) Late Fees\$75.00
 - c) Hearing Expenses.....\$46.89
 - d) **LESS: Security Deposit..... (\$1300.00)**
 - e) Total**\$11,617.12**
- An order for vacant possession of the rented premises,
- A payment of a daily rate of rent in the amount of \$42.74, beginning 28 July 2022 and continuing to the date the landlord obtains possession of the rental unit,
- The tenants 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.

29 July 2022

Date

John R. Cook
Residential Tenancies Tribunal