

Residential Tenancies Tribunal

Application 2023 No. 527NL
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Decision 23-0527-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:48 PM on 27 June 2023 via teleconference.
2. The applicant, [REDACTED] hereinafter referred to as “the tenant”, attended the hearing. The respondents, [REDACTED] hereinafter referred to as “landlord1” and “landlord2”, respectively, were also in attendance.

Issues before the Tribunal

3. The tenant is seeking the determination of the validity of a termination notice issued to her on 04 June 2023.
4. The landlords are seeking the following:
 - An order for payment of rent in the amount of \$1016.66,
 - An order for a payment of late fees in the amount of \$75.00, and
 - 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 is section 19 of the *Residential Tenancies Act, 2018*, and rule 29 of the Rules of the Supreme Court, 1986.

Preliminary Matters

7. Landlord1 amended his application at the hearing and stated that he was now seeking a total claim of rent in the amount of \$1275.00.

Issue 1: Rent Owing - \$1275.00

Issue 2: Late Fees - \$75.00

Relevant Submissions

The Landlord's Position

8. The landlords and the tenant entered into a monthly rental agreement on 01 January 2023, and a copy of that executed agreement was submitted with the tenant's application. The agreed rent was set at \$1100.00 per month, and it is acknowledged in the submitted agreement that the tenant had paid a \$550.00 security deposit.
9. With their application, the landlords had submitted a copy of their rent records showing the payments the tenant had made since she moved into the unit. Landlord1 pointed out that in February 2023 he reduced the rent by \$100.00 to \$1000.00 for that month, and in March 2023, the rent was again reduced by \$200.00 to \$900.00.
10. According to the landlords' records, the tenant's rent was paid and up-to-date for the period ending 31 March 2023. In April 2023, the tenant did not have her rent for that month paid until 20 April 2023, and she also paid a \$75.00 late fee for that month. On 17 May and 19 May 2023, the tenant paid a total of \$1075.00, which again included a \$75.00 late fee. The remaining \$100.00 owing for that month was paid on 05 June 2023, but no rent was paid towards June's rent. The landlords calculate the tenant owes a total of \$1275.00.

The Tenant's Position

11. The tenant did not dispute the landlords' account of the amounts that were paid for April and May 2023, and she acknowledged that she had not paid her rent for June 2023.
12. With respect to February's rent, the tenant claimed that she had paid \$900.00 for that month, as the landlords had reduced the rent for that month by \$200.00. With respect to March 2023, the tenant claimed that she had paid \$1150.00 for that month.

Analysis

13. I accept the testimony and evidence of the landlords concerning the payments that they had received from the tenant. The tenant claims that she had paid \$1150.00 for March 2023, but as she had not produced any evidence to corroborate that claim, such as banking records or an e-Transfer receipt, I reject that testimony.
14. Regarding the late fees, 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.

15. According to the landlords' records, the tenant had paid a late fee of \$75.00 on 20 April 2023 as her rent was late that month, but on that date, the maximum late fee that could have been charged was \$41.00, meaning she had a credit of \$34.00cr on that date. Rent was late again on 02 May 2023, and late fees could again be charged, and since the arrears were never paid off after that date, the maximum of \$75.00 was reached on 06 June 2023.
16. As the landlords are also seeking an order for vacant possession of the rented premises, I find that they are entitled to a payment of rent and late fees to the date of the hearing and a per diem thereafter. I calculate that amount to be \$942.32 (a credit of \$9.00cr for the period ending 31 May 2023 (\$1100.00 rent less a total of \$1075.00 paid on 17 May and 19 May 2023, plus the \$34.00 overpayment of late fees from the previous month), \$876.32 for June 2023 (\$1100.00 per month x 12 months = \$13,200.00 per year ÷ 365 days = \$36.16 per day x 27 days, less the payment of \$100.00 received on 05 June 2023) and the late fee of \$75.00 referenced in the previous paragraph).

Decision

17. The landlords' claim for a payment of rent and late fees succeeds in the amount of \$942.32.
18. The tenant shall pay a daily rate of rent in the amount of \$36.16, beginning 28 June 2023, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 3: Vacant Possession of Rented Premises

Issue 4: Validity of Notice

Relevant Submissions

The Landlord's Position

19. The landlords issued the tenant 3 different termination notices.
20. The first notice, issued on 07 March 2023, was a standard 3-month notice, and it had an effective termination date of 30 June 2023.
21. On 04 June 2023, the landlords issued the tenant a second notice, and a copy of that notice was submitted with the tenant's application. That notice was issued under section 24 of the *Residential Tenancies Act, 2018* (notice where tenant contravenes peaceful enjoyment and reasonable privacy) and it had an effective termination date of 10 June 2023.
22. A third notice was issued on 13 June 2023. This final notice was issued under section 19 of the *Act* (notice where failure to pay rent) and it had an effective termination date of 25 June 2023.
23. The landlords are seeking an order for vacant possession of the rented premises.

The Tenant's Position

24. The tenant acknowledged receiving these 3 termination notices, and through her application, she is seeking a determination of the validity of the second notice, issued on 04 June 2023.

Analysis

25. I pointed out at the hearing that case law has established that issuing a termination notice, after previous notices are already in place, affects how it is that a landlord may secure an order for possession of the rented premises. Although the landlords were keen to discuss issues of peaceful enjoyment at the hearing, I determined that as the final notice, issued on 13 June 2023 for failure to pay rent, was the operative notice, any evidence concerning peaceful

enjoyment would be irrelevant to a determination as to whether that notice was valid.

26. With respect to that final notice, 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.

27. The tenant acknowledged at the hearing that she had not paid her rent for June 2023. On 13 June 2023, when the notice was issued, the tenant had been in rental arrears for a period longer than 5 days and no rent was paid after the notice was issued.
28. As that notice, therefore, meets all the requirements set out in this section of the *Act*, and as it was properly served, it is a valid notice.

Decision

29. The termination notice issued to the tenant on 13 June 2023 is a valid notice.
30. The landlord's claim for an order for vacant possession of the rented premises succeeds.

31. 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 5: Security Deposit

32. Landlord1 stated that the tenant had paid a security deposit of \$550.00 on 16 December 2022. As the landlords' claim has been successful, they shall retain that deposit as outlined in this decision and attached order.

Issue 6: Hearing Expenses

33. The landlords paid a fee of \$20.00 to file this application and a receipt was submitted with their application. As the landlord's claim has been successful, the tenant shall pay that hearing expense.

Summary of Decision

34. The landlord is entitled to the following:
- A payment of \$412.32, determined as follows:
 - a) Rent Owing and Late Fees\$942.32
 - b) Hearing Expenses.....\$20.00
 - c) **LESS: Security Deposit..... (\$550.00)**
 - d) Total\$412.32
 - An order for vacant possession of the rented premises,
 - A payment of a daily rate of rent in the amount of \$36.16, beginning 28 June 2023 and continuing to the date the landlords obtain vacant possession of the rental unit,
 - The tenant shall also pay to the landlords any costs charged to the landlords by the Office of the High Sheriff should the landlords be required to have the Sheriff enforce the attached Order of Possession.

28 June 2023

Date


John R. Cook
Residential Tenancies Tribunal