

Residential Tenancies Tribunal

Decision 20-0158-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:05 am on 16 July 2020 via teleconference.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED], hereinafter referred to as "the landlord".
3. The respondent, [REDACTED], hereinafter referred to as "the tenant", did not participate in the hearing.

Issues before the Tribunal

4. The landlord is seeking the following:
 - a. An order for a payment of rent in the amount of \$300.00,
 - 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*.

Preliminary Matters

7. The tenant was not present or represented at the hearing and I was unable to reach her 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 she has been properly served.

8. The landlord submitted an affidavit stating that she had sent the notice of the hearing to the tenant by registered mail on 06 March 2020 and she submitted a copy of the tracking history with her application. That tracking history shows that notice cards were left for the tenant indicating that the notice was available for pick-up at the Post Office, but it was never collected by the tenant.
9. Section 42 of the *Residential Tenancies Act, 2018* states:

Application to director

42. (1) A landlord or tenant may, within one year after termination of the rental agreement, apply to the director to determine

- (a) a question arising under this Act or the regulations;***
- (b) whether a provision of a rental agreement has been contravened; or***
- (c) whether a provision of this Act or the regulations has been contravened.***

(2) An application under subsection (1) shall be submitted to the director in the form and with the fee set by the minister.

(3) The applicant shall serve the application submitted to the director under subsection (2) by

- (a) giving it personally to the other party;***
- (b) sending it to the other party by prepaid registered mail or prepaid express post at an address provided by the other party;***
- (c) sending it electronically where***
 - (i) it is provided in the same or substantially the same form as the written notice or document,***
 - (ii) the other party has provided an electronic address for receipt of documents, and***
 - (iii) it is sent to that electronic address; or***
- (d) sending it to the other party by courier service at an address provided by the other party.***

...

(6) For the purpose of this section, where a copy of the application is sent by registered mail or express post, it shall be considered to have been served on the fifth day after mailing, and the service may be proved by providing evidence that the copy of the application was prepaid and properly addressed and sent.

10. Although the tenant did not receive notice of the hearing, as it was sent by registered mail on 06 March 2020, she is considered to have been served on 11 March 2020. 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 her absence.
11. The landlord amended her application and stated that she was now seeking a payment of rent in the amount of \$675.00.

Issue 1: Vacant Possession of the Rented Premises

Relevant Submissions

12. The landlord stated that she had entered into a 1-year, fixed-term rental agreement with the tenant on 01 November 2018 and a copy of the lease was submitted with the landlord's application. According to this lease, the rent was set at \$735.00 per month and the landlord stated that this rent was paid on the tenant's behalf by the Department of Advanced Education, Skills and Labour (AESL).
13. The landlord testified that when the lease expired On 31 October 2019, it reverted to a month-to-month tenancy and commencing 01 November 2019, the rent had increased to \$810.00 per month.
14. The landlord submitted rent records with her application showing the payments she had received from the tenant since she had moved into the rented premises. According to these records, the tenant's rent was paid and up-to-date for the period ending 31 October 2019. The landlord pointed out, though, that after 01 November 2019 AESL continued to pay \$735.00 to the landlord for the monthly rent. This amount was \$75.00 short of the required \$810.00 and the records show that since November 2019 the monthly rent was short by that amount each month.
15. By February 2020 the tenant had amassed rental arrears in the amount of \$300.00 and because of that issue, the landlord issued the tenant a termination notice and a copy of that notice was submitted with her application.
16. This termination notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 25 February 2020.

17. According to the landlord's records, no rent payments were made between 13 February 2020, when the notice was issued, and 25 February 2020, the effective date of the notice. The landlord is seeking an order for vacant possession of the rented premises.

Analysis

18. 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.

19. According to the landlord's rent records, on 13 February 2020 the tenant was in arrears in the amount of \$300.00 and had been in arrears since the beginning of that month. No payments were made by the tenant prior to the effective termination date set out in that notice.
20. As the tenant had not paid off the arrears prior to 25 February 2020 and as the notice meets the timeframe requirements set out in section 19 of the *Act*, it is a valid notice.

Decision

21. The landlord's claim for an order for vacant possession of the rented premises succeeds.
22. 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 2: Rent Owing - \$675.00

Relevant Submissions

23. According to the submitted rent records, the rent paid on the tenant's behalf was short by \$75.00 every month since November 2019—a total of 9 months—bringing the arrears to \$675.00 for the period ending 31 July 2020.
24. The landlord is seeking an order for a payment of rent in the amount of \$675.00.

Analysis

25. I accept the landlord's evidence which shows that the tenant had only been paying \$735.00 each month, instead of the required \$810.00. As the landlord has been granted an order for vacant possession of the rented premises, I find that she is entitled to a payment of rent to the date of the hearing and a per diem thereafter.
26. I calculate the amount owing to be \$289.96 (\$600.00 owing for the period ending 30 June 2020, \$424.96 for July 2020 (\$810.00 per month x 12 months = \$9720.00 per year ÷ 366 days = \$26.56 per day x 16 days = \$424.96) less the July rental payment of \$735.00 paid on 30 June 2020).

Decision

27. The landlord's claim for a payment of rent succeeds in the amount of \$289.96.
28. The tenant shall pay a daily rate of rent in the amount of \$26.56, beginning 17 July 2020, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 3: Late Fees

Relevant Submissions

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

Analysis

30. 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.

31. 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.*

32. As the tenant first fell into rental arrears in November 2020, the landlord is entitled to an award for the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 4: Hearing Expenses

34. The landlord submitted a hearing expense claim form and receipts showing that she had paid a fee of \$20.00 to file this application and had paid \$11.05 to send the notice of the hearing to the tenant by registered mail. As the landlord's claim has been successful, the tenant shall pay these hearing expenses.

Issue 5: Security Deposit

35. The landlord stated that the tenant had paid a security deposit of \$367.50 on 14 November 2018 and receipt of that deposit is acknowledged in the submitted lease. As the landlord's claim has been successful, she shall retain the the security deposit as outlined in this decision and order.

Summary of Decision

36. The landlord is entitled to the following:

- A payment of 28.51 , determined as follows:
 - a) Rent Owing\$289.96
 - b) Late Fees\$75.00
 - c) Hearing Expenses.....\$31.05
 - d) **LESS: Security Deposit.....(\$367.50)**

e) Total \$28.51

- An order for vacant possession of the rented premises,
- A payment of a daily rate of rent in the amount of \$26.56, beginning 17 July 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.

21 July 2019

Date

[Redacted]
John R. Cook
Residential Tenancies Tribunal