

Residential Tenancies Tribunal

[REDACTED] Decision 20-0234-05

John R. Cook
Adjudicator

Introduction

1. The applicant, [REDACTED], hereinafter referred to "the tenant", and the respondent, [REDACTED], hereinafter referred to as "the landlord", both participated in the hearing.
2. This hearing was conducted via written submissions. The tenant's written submission and response were to be supplied to our office by 14 August and 28 August 2020, respectively. The landlord's response to the tenant's claim was to be submitted by 21 August 2020.

Issues before the Tribunal

3. The tenant is seeking the following:
 - An order for a refund of rent in the amount of \$975.00, and
 - An order for compensation for inconvenience in the amount of \$75.00.

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*.

Issue 1: Refund of Rent - \$975.00

Relevant Submissions

The Tenants' Submissions, Received 11 August and 20 August 2020

5. In the tenant's written submission, he claims that the landlord had "bullied" him on 29 April 2020 and he claims that the landlord had one of his workers move him, and his possessions, to The Captain's Quarters Hotel on that date.

6. Because of this affront, the tenant is seeking a refund of all of the rent he had paid to the landlord during his stay at the rental unit.
7. Based on the tenant's submitted evidence, it appears that he moved into the rented property on 15 December 2019 and was ousted on 29 April 2020.
8. The tenant submitted copies of e-mail receipts with his submissions showing that he had paid \$360.00 on 06 February 2020 and \$320.00 on 03 March 2020. In an e-mail to the landlord, dated 03 March 2020, the tenant acknowledges that he owes the landlord rent for the period from 15 December to 31 December 2019.
9. In the tenant's submission from 11 August 2020, he writes that he had paid \$325.00 for April 2020, but had not received a receipt. In his response, received at out office on 20 August 2020, he writes that he had not paid rent for April 2020 as the landlord had told him to keep it.
10. The tenant is seeking a refund of rent for each of January, February and March 2020, a total of \$975.00 (\$325.00 per month x 3 months).

The Landlord's Response, Received 12 August 2020

11. In the landlord's submissions, he writes that he is a disabled senior who suffers from [REDACTED], a sound sensitivity disorder. Looking through the e-mail exchanges between the landlord and the tenant it appears that the landlord was experiencing a certain amount of distress because of the noise the tenant continually caused at the rental unit.
12. On 11 February 2020, the landlord sent an e-mail to the tenant informing him that, because he has not complied with his requests to refrain from making too much noise in the kitchen in the mornings, he is terminating his tenancy effective the end of February 2020.
13. The landlord also writes that he had attempted to find the tenant alternate accommodations at other rental units and had even offered to buy him a plane ticket to [REDACTED]—his home town. Despite these overtures, the tenant continued to reside at the property through March and April 2020.
14. The landlord does not contest the tenant's claim that he removed him, and his possessions, on 29 April 2020 and moved him into The Captain's Quarters Hotel. He submitted a copy of a receipt showing that he had paid \$450.00 for the tenant's stay at that hotel.
15. The landlord writes that the situation with the tenant was "untenable" and he does "not know what else [he] could have done".
16. Regarding the tenant's request for a refund of rent, the landlord calculates that, based on a rate of \$325.00 per month, the tenant ought to have paid \$1476.00 for the period from 15 December 2019 to 30 April 2020. He writes that he had

received \$300.00 on 05 January 2020 and \$360.00 on 05 February 2020. He also indicates that the tenant had paid “(\$325?)” on 29 April 2020. The landlord calculates that the tenant still owes him \$491.00 in rent for the time he stayed at the rented premises.

Analysis

17. Based on the submissions of both the tenant and the landlord, I find that they had entered into an agreement whereby the tenant would pay to the landlord \$325.00 per month in rent. I also find that the tenancy ran for the period from 15 December 2019 through to 29 April 2020, at which point the landlord ousted the tenant from the premises.
18. “Rent” is defined in the *Residential Tenancies Act, 2018* as “money ... paid, or required to be paid under a rental agreement, by a tenant to a landlord before or during the use or occupancy of a residential premises for the use or occupation of the residential premises”.
19. As the tenant had use and enjoyment of the property up to 29 April 2020, I calculate, then, that the rent the tenant ought to have paid to the landlord for that period totalled \$1451.67 (\$162.50 for December 2020 (\$325.00 per month x 1/2), \$325.00 for each of January, February and March 2020, and \$314.17 for April 2020 (\$325.00 ÷ 30 days in April x 29 days use = \$314.17)).
20. Based on the party’s respective submissions, though, I find that, for this period, the tenant had only paid \$980.00 (\$300.00 on 05 January 2020, \$360.00 on 05 February 2020 and \$320.00 on 03 March 2020).
21. I do grant that the landlord had acted in contravention of the *Act* in ousting the tenant from the property on 29 April 2020. Had the tenant’s rent been paid in full up to the period ending 30 April 2020—a total of \$1462.50—I would agree that he would have been entitled to a refund of rent in the amount of \$10.83 (\$1462.50 - \$1451.67). But the tenant was carrying rental arrears exceeding that amount when the landlord removed him from the property.
22. No further evidence was presented by the tenant to establish that the landlord had discontinued any service or privilege during his tenancy, up to 29 April 2020, or that his use and enjoyment of the rented premises was in any way diminished in any way.
23. As such, the tenant’s claim for a refund of rent does not succeed.

Decision

24. The tenant’s claim for a refund of rent does not succeed.

Issue 2: Compensation for Inconvenience - \$75.00

Relevant Submissions

The Tenants' Submissions, Received 11 August and 20 August 2020

25. On his application, the tenant indicates that he had paid \$75.00 for 5 meals of Mary Brown's. And with his written submissions he submitted delivery orders showing that, on 2 occasions, he had ordered 2 x 4 pieces of chicken with taters costing \$12.59 + HST each. These 2 orders total \$57.92.

The Landlord's Response, Received 12 August 2020

26. The landlord writes that he had paid for the tenant's accommodations at The Captain's Quarters Hotel and that after 29 April 2020 he had paid his staff to bring the tenant to various locations to view new rental accommodations.
27. He also writes that he had bought food for the tenant after 29 April 2020 and also had food delivered to the tenant during his stay at the hotel.

Analysis

28. As I have indicated above, removing a tenant from a rental property without his consent is a violation of the *Residential Tenancies Act, 2018* and does not comply with the requirements for terminating rental agreements. Removing a tenant's possessions from a rental unit also constitutes a seizure and is also a violation of this Act.
29. Where such a removal and seizure of a tenant and his possessions results in the tenant incurring costs that he would otherwise not have incurred had he been permitted to continue to reside at the property, this Tribunal has the authority to require the landlord to compensate the tenant for those costs.
30. Although not explicitly stated by the tenant, I take it that he believes that the landlord ought to compensate him for the 5 meals he consumed after he moved out of the unit because he was improperly removed from his apartment on 29 April 2020.
31. I am not persuaded by that claim. Had the tenant been allowed to continue to reside at the rental premises after 29 April 2020 he would have presumably been eating regular meals and, presumably, would have been required to pay for those meals. Without any further evidence, I don't see how his improper eviction by the landlord alters that fact.
32. I also note that the tenant did not dispute the landlord's contention that he was supplying and delivering meals to him after he had been moved to the hotel.

Decision

33. The tenant's claim for compensation for inconvenience does not succeed.

Summary

34. The tenant's claim for a refund of rent and for compensation for inconvenience does not succeed.

01 October 2020

Date


John R. Cook
Residential Tenancies Tribunal