

Residential Tenancies Tribunal

Decision 20-0255-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:08 pm on 24 August 2020 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing.
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 \$1800.00,
 - b. An order for vacant possession of the rented premises, and
 - c. Authorization to retain the security deposit of \$450.00.

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. The tenant was not present or represented at the hearing. I was able to reach her by telephone but she informed me that she was unable to participate in the hearing. 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. The landlord submitted an affidavit with his application stating that he had personally served the tenant with notice of this hearing on 22 July 2020. He also stated that he had sent the notice to her by e-mail at an e-mail address she had provided to him when she filled out the rental application. A copy of their e-mail correspondence was also submitted with the landlord's application. The tenant has had 32 days to provide a response. 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.

8. The landlord amended his application at the hearing and stated that she was seeking an additional \$3600.00 in rent for a total claim of \$5400.00. He also amended his application to include a claim for late fees.

Issue 1: Rent Owing - \$5400.00

Relevant Submissions

9. The landlord stated that he had entered into a monthly rental agreement with the tenant in December 2019. The agreed rent was set at \$900.00 per month and he stated that the tenant had paid a security deposit of \$450.00.
10. With his application, the landlord submitted rent records showing the payments he had received from the tenant since she had moved into the property. According to these records, the landlord had received a pro-rated rent for December 2019, as well as the full rent for the months of February and March 2020. He stated, however, that he had received no payments for the months of January, April, May, June, July or August 2020—a total of 6 months.
11. The landlord is seeking an order for a payment of rent in the amount of \$5400.00 (6 months x \$900.00 per month).

Analysis

12. I accept the landlord's claim that the tenant has not paid rent as required and that there have been 6 months where no rent was paid. 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.
13. I calculate the amount owing to be \$5208.24 (\$4500.00 for the period ending 31 July 2020 and \$708.24 for August 2020 (\$900.00 per month x 12 months = \$10,800.00 per year ÷ 366 days = \$29.51 per day x 24 days = \$708.24)).

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14. The landlord's claim for a payment of rent succeeds in the amount of \$5208.24.
15. The tenant shall pay a daily rate of rent in the amount of \$29.51, beginning 25 August 2020, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Late Fees

Relevant Submissions

16. The landlord has assessed late fees.

Analysis

17. 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.

18. 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

19. As the tenant has been in arrears since 02 January 2020, the landlord is entitled to an award for the maximum fee of \$75.00 set by the minister.

Issue 3: Vacant Possession of the Rented Premises

Relevant Submissions

20. With his application, the landlord submitted a copy of a termination notice which he stated he had personally delivered to the tenant on 09 April 2020. He stated that he had also sent it to her by e-mail on that same day.
21. This termination notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 15 May 2020.
22. The landlord is seeking an order for vacant possession of the rented premises.

Analysis

23. 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.

24. According to the landlord's testimony and records, the tenant had been in rental arrears for over 3 months when he issued the termination notice to her. No payments were made since the notice was served on the tenant and the rent owing has continued to accumulate.

25. As the notice meets the timeframe requirements set out in section 19 of the *Act*, it is a valid notice.

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26. The landlord's claim for an order for vacant possession of the rented premises succeeds.
27. 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 4: Security Deposit

28. The landlord stated that the tenant had paid a security deposit of \$450.00 in December 2019. As the landlord's claim has been successful, he shall retain the security deposit as outlined in this decision and order.

Summary of Decision

29. The landlord is entitled to the following:
- A payment of \$4833.24, determined as follows
 - a) Rent Owing\$5208.24
 - b) Late Fees\$75.00
 - c) **LESS: Security Deposit(\$450.00)**
 - d) Total Owing to Landlord\$4833.24
 - A payment of a daily rate of rent in the amount of \$29.51, beginning 25 August 2020 and continuing to the date the landlord obtains possession of the rental unit,
 - An order for vacant possession of the rented premises,
 - 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.

28 August 2020

Date

John R. Cook
Residential Tenancies Tribunal