

Residential Tenancies Tribunal

Decision 20-0310-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:08 pm on 21 August 2020 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing. The respondent, [REDACTED], hereinafter referred to as "the tenant", also participated.

Issues before the Tribunal

3. The landlord is seeking the following:
 - a. An order for a payment of rent in the amount of \$600.00,
 - 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

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this case are sections 15 and 19 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

6. The landlord amended his application at the hearing and stated that he was now seeking an additional \$600.00 in rent for a total claim of \$1200.00. With the tenant's permission, the application was also amended to include a claim for a payment of utilities in the amount of \$112.86.

Issue 1: Rent Owing - \$1200.00

Relevant Submissions

The Landlord's Position

7. The landlord stated that he had entered into a monthly rental agreement with the tenant in December 2016. The agreed rent was set at \$600.00 and the landlord stated that he had also received \$372.00 for a security deposit. The landlord stated that the rent and security deposit was paid on the tenant's behalf by Income Support.
8. The landlord testified that the tenant's rent was paid and up-to-date for the period ending 30 June 2020, but he claimed that he had received no rent for either July or August 2020.
9. The landlord is seeking an order for a payment of \$1200.00 for those 2 months.

The Tenant's Position

10. The tenant acknowledged that no rent was paid for those 2 months. He stated that his funding has been cut off.

Analysis

11. As the tenant conceded that he owes the rent claimed by the landlord, that claim succeeds. However, 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.
12. I calculate the amount owing to be \$1013.07 (\$600.00 owing for July 2020 and \$413.07 for August 2020 (\$600.00 per month x 12 months = \$7200.00 per year ÷ 366 days = \$19.67 per day x 21 days = \$413.07)).

Decision

13. The landlord's claim for a payment of rent succeeds in the amount of \$1013.07.
14. The tenant shall pay a daily rate of rent in the amount of \$19.67, beginning 22 August 2020, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Late Fees

Relevant Submissions

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

Analysis

16. 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.

17. 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.***

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

Issue 3: Utilities - \$112.86

Relevant Submissions

The Landlord's Position

19. The landlord stated that the tenant had been making long-distance phone calls from the rental unit and had racked up bills totalling \$112.86. He stated that he had provided the tenant with these bills after he had filed this application.

20. The landlord is seeking an order for a payment of utilities in the amount of \$112.86.

The Tenant's Position

21. The tenant acknowledged receiving the phone bills from the landlord and he agreed that charges for the long distance calls total \$112.86.

Analysis

22. As the tenant did not contest this portion of the landlord's claim, his claim succeeds.

Decision

23. The landlord's claim for a payment of utilities succeeds in the amount of \$112.86.

Issue 4: Vacant Possession of the Rented Premises

Relevant Submissions

The Landlord's Position

24. With his application the landlord had submitted a termination notice which he stated was delivered to the tenant on 11 July 2020.

25. This termination notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 22 July 2020.

26. The landlord is seeking an order for vacant possession of the rented premises.

The Tenant's Position

27. The tenant acknowledged that he had received the submitted termination notice.

Analysis

28. 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.

29. It was not disputed that the tenant had not paid his rent for July and August 2020.
30. As the tenant had been in arrears for longer than 5 days when the notice was issued and as he had not paid off those arrears by 22 July 2020, the termination notice is valid.

Decision

31. The landlord's claim for an order for vacant possession of the rented premises succeeds.
32. 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

33. The landlord stated that a security deposit of \$372.00 had been paid to him, on the tenant's behalf, by Income Support. According to his application, that payment was made on 12 May 2017. As the landlord's claim has been successful, he shall retain the security deposit as outlined in this decision and order.

Issue 6: Hearing Expenses

34. As the landlord's claim has been successful, the tenant shall pay his hearing expense of \$20.00 for the costs of filing this application.

Summary of Decision

35. The landlord is entitled to the following:
 - A payment of \$848.93, determined as follows:
 - a) Rent Owing\$1013.07
 - b) Utilities\$112.86

c) Late Fees\$75.00
d) Hearing Expenses\$20.00

e) LESS: Security Deposit..... (\$372.00)

f) Total Owing to Landlord\$848.93

- A payment of a daily rate of rent in the amount of \$19.67, beginning 22 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

