

Residential Tenancies Tribunal

Decision 20-0318-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:15 am on 29 October 2020 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing. He was represented at the hearing by [REDACTED] ("[REDACTED]").
3. The respondent, [REDACTED], hereinafter referred to as "the tenant", did not participate.

Issues before the Tribunal

4. The landlord is seeking the following:
 - An order for vacant possession of the rented premises,
 - An order for a payment of rent in the amount of \$614.83,
 - An order for a payment of late fees in the amount of \$75.00,
 - An order for a payment of utilities in the amount of \$235.68, and
 - Authorization to retain the security deposit of \$500.00.

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 are sections 15 and 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 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. The landlord testified that he had served the tenant, by e-mail, on 12 October 2020, and a copy of that e-mail was submitted at the hearing. The tenant has had 16 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 he was no longer seeking an order for possession of the premises as the tenant moved out on 02 September 2020. He also amended his claim for rent and stated that he was now seeking a payment of an additional \$680.00.

Issue 1: Rent - \$1294.83

Relevant Submissions

9. The landlord stated that he had entered into a 7-month, fixed-term rental agreement with the tenant on 20 January 2020 and a copy of the executed lease was submitted with his application. The agreed rent was set at \$680.00 per month and it is acknowledged in the lease that the tenant had paid a security deposit of \$500.00.
10. The landlord stated that in July 2020 the tenant fell into rental arrears and on 29 July 2020 he issued her a termination notice, a copy of which was submitted with his application. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* (notice where failure to pay rent) and it had an effective termination date of 09 August 2020. The landlord testified that he regained possession of the property on 02 September 2020.
11. With his application, the landlord submitted rent records showing the payments the tenant had made since she had moved into the unit. According to these records, the tenant had amassed a rent credit of \$65.17cr for the period ending 30 June 2020. Since that date, however, the landlord received no rent for either July or August 2020.
12. The landlord is seeking an order for a payment \$1294.83 (2 months' rent less the credit of \$65.17cr).

Analysis

13. I accept the landlord's testimony and evidence in this matter and I agree with him that the tenant had not paid her rent as required during the last 2 months of her tenancy. As such, his claim succeeds.

Decision

14. The landlord's claim for a payment of rent succeeds in the amount of \$1294.83.

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.

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.

Decision

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

Issue 3: Utilities - \$235.68

Relevant Submissions

20. The landlord stated that he rents out both the upstairs and downstairs apartments, but they share 1 power meter. He stated that he had an agreement with the tenant that she would be responsible for 1/3 of the charges that he was billed and these payments were usually made to him at the end of each month.
21. With his application, the landlord submitted a spreadsheet showing the payments the tenant had made since she had moved in and he pointed out that she had made all of her utility payments up to the end of May 2020.
22. He pointed out, though, that the tenant did not pay her calculated share of \$87.86 for June 2020 and he stated that no utility payments were made for July or August 2020 either. At the hearing, the landlord stated that he was only seeking a payment of \$87.86 for June 2020 as his spreadsheet did not include a calculation for the utility charges for July or August 2020.

Analysis

23. I accept the landlord's claim that the tenant had not made her utility payment for June 2020 and I therefore find that the landlord is entitled to the \$87.86 he is claiming here.

Decision

24. The landlord's claim for a payment of utilities succeeds in the amount of \$87.86.

Issue 4: Security Deposit

25. The landlord stated that the tenant had paid a security deposit of \$500.00 on 20 January 2020, and receipt of that deposit is acknowledged in the submitted lease. As the landlord's claim has been successful, he shall retain that deposit as outlined in this decision and attached order.

Issue 5: Hearing Expenses

26. 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

27. The landlord is entitled to the following:

- a) Rent Owing \$1294.83
- b) Late Fees \$75.00
- c) Utilities \$87.86
- d) Hearing Expenses \$20.00
- e) LESS: Security Deposit (\$500.00)
- f) Total Owing to Landlord \$977.69

22 February 2021

Date

[Redacted]
John R. Cook
Residential Tenancies Tribunal