

Residential Tenancies Tribunal

Decision 20-0336-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:08 pm on 16 September 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", also participated 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 \$154.46,
 - 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, 19 and 34 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

7. The landlord amended her application and stated that she was now seeking an order for a payment of rent in the amount of \$204.46.

Issue 1: Rent - \$204.46

Relevant Submissions

The Landlord's Position

8. The landlord stated that she had entered into a 1-year, fixed-term rental agreement with the tenant on 01 June 2015 and a copy of the executed leases was submitted with her application.
9. According to the lease, in 2015 the rate of rent was set at \$810.00. The landlord stated that the tenant's rent was paid on his behalf by the Department of Advanced Education, Skills and Labour (AESL).
10. The landlord has been incrementally increasing that rent since the tenant moved in. According to her submitted rent records, it increased to \$820.00 in June 2016, to \$830.00 in June 2018, to \$840.00 in June 2019 and to \$845.00 in August 2020. The landlord testified that she had notified the tenant in each case that the rent would increase by posting the appropriate notice to his door within the required timeframe.
11. According to the landlord's records, the tenant had been maintaining a credit of \$254.54cr since 2016 as a result of an overpayment in October 2016. Since that time, the landlord's records show that she was receiving \$820.00 each month from AESL.
12. When the rent increased to \$830.00 in June 2018, AESL continued to pay to the landlord \$820 each month, and that credit was then subsequently decreasing by \$10.00 each month. In 2019, the same thing happened when the rent was increased to \$840.00. From June 2019 onward, the rent credit then was decreasing by \$20.00 as the landlord was still only receiving \$820.00 per month.
13. In December 2019, the rent credit ran out and the tenant then fell into rental arrears. In December 2019 those arrears were \$14.46 and they have been increasing by \$20.00 each month, until the rent increased to \$845.00 in August 2020, and the tenant has been short by \$25.00 for the months of August and September 2020.
14. The landlord's rent records show that the tenant is now in rental arrears in the amount of \$204.46.

The Tenant's Position

15. The tenant stated that he did not realize that he had fallen into arrears and he claimed that it was his understanding that the rent was paid automatically to the landlord. He testified that he did not comprehend how this matter had not been resolved.

16. The tenant also stated that it was not his intention to shortchange the landlord and he claimed that he did not realize what had been happening.

Analysis

17. I accept the landlord's claim that she had given the tenant the appropriate notices of rental increase. She also testified that she had attempted to contact the tenant after he had fallen into arrears, but he did not respond to her attempts to resolve this issue.
18. I also accept the landlord's evidence which shows that AESL had only been paying \$820.00 to the landlord each month, despite the fact that the rent had increased to \$830.00 in 2018, to \$840.00 in 2019 and to \$845.00 in 2020.
19. As the landlord's records show that the tenant currently has a balance owing of \$204.46, her claim succeeds in that amount.

Decision

20. The landlord's claim for a payment of rent succeeds in the amount of \$204.46.

Issue 2: Late Fees

Relevant Submissions

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

Analysis

22. 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.

23. 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.

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

Decision

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

Issue 3: Vacant Possession of the Rented Premises

Relevant Submissions

The Landlord's Position

26. With her application, the landlord submitted a copy of a termination notice which she stated was delivered to the tenant, on 20 July 2020, by her superintendent.

27. This termination notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 31 July 2020.

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

The Tenant's Position

29. The tenant stated that he was not sure if he received the termination notice.

Analysis

30. The relevant subsections of section 19 of the *Residential Tenancies Act, 2018* state:

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.

...

(4) In addition to the requirements under section 34, a notice under this section shall

- (a) be signed by the landlord;*
- (b) state the date on which the rental agreement terminates and the tenant is required to vacate the residential premises; and*
- (c) be served in accordance with section 35.*

31. And section 34 of the Act states:

Requirements for notices

34. A notice under this Act shall

- (a) be in writing in the form prescribed by the minister;*
- (b) contain the name and address of the recipient;*
- (c) identify the residential premises for which the notice is given; and*
- (d) state the section of this Act under which the notice is given.*

- 32. The landlord's evidence shows that, on 20 July 2020, when the notice was issued, the tenant was carrying rental arrears in the amount of \$154.46, and had been in arrears since the beginning of that month—a period of 17 days.
- 33. However, the termination notice issued to the tenant is not valid, and for 2 reasons.
- 34. Firstly, the landlord had not correctly identified the residential premises, the tenant's apartment, for which the notice was given. That is, the notice is not in compliance with s. 34.(b) or s. 34.(c) quoted in paragraph 31, above. The residential premises are located at [REDACTED]

[REDACTED]. But the termination notice identifies the residential premises as “[REDACTED]”. The street address, building name and postal code are incorrect.

35. Secondly, s. 19.(2) of the *Act* states that where a tenant pays off all of the rental arrears prior to the effective termination date set out in the notice, the notice becomes void and the tenant is not required to vacate the premises.

36. According to the landlord's rent records, on 20 July 2020, the day the notice was issued, the tenant was in arrears in the amount of \$154.46 and the notice states that the tenancy would terminate if those arrears were not paid by 31 July 2020. But on 31 July 2020, the tenant did pay off the arrears. The landlord's records show that she received a payment of \$820.00 on 31 July 2020, leaving a rent credit of \$665.54cr. That payment voids the notice and the tenancy was therefore not terminated.

Decision

37. The termination notice issued to the tenant on 20 July 2020 is not a valid notice.

38. The landlord's claim for an order for vacant possession of the rented premises does not succeed.

Issue 4: Hearing Expenses

Relevant Submissions

39. The landlord submitted a hearing expense claim form and a receipt showing that she had paid a fee of \$20.00 to file this application. She also testified that she had paid \$11.30 to serve the tenant with notice of the hearing by registered mail. She is seeking an order for a payment of those hearing expenses.

Analysis

40. Policy with this Section is that an applicant is only able to claim the \$20.00 filing fee as a hearing expense if they receive an award which is greater than the amount of the security deposit. The security deposit held by the landlord totals \$400.00, and as the landlord will receive an award less than that amount she therefore cannot claim the filing fee.

Decision

41. The landlord's claim for hearing expenses succeeds in the amount of \$11.30

Summary of Decision

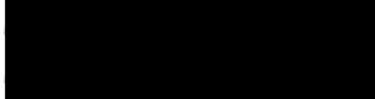
42. The landlord is entitled to a payment of \$290.76, determined as follows:

a) Rent Owing	\$204.46
b) Late Fees	\$75.00
c) Hearing Expenses.....	\$11.30
d) Total Owing to Landlord	<u>\$290.76</u>

43. The landlord's claim for an order for vacant possession of the rented premises does not succeed.

18 September 2019

Date


John R. Cook
Residential Tenancies Tribunal