

Residential Tenancies Tribunal

Decision 20-0385-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:03 pm on 07 October 2020 via teleconference.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED], hereinafter referred to as "the landlord". The respondent, [REDACTED], hereinafter referred to as "the tenant", did not participate.

Issues before the Tribunal

3. The landlord is seeking the following:
 - a. An order for a payment of rent in the amount of \$425.00,
 - 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, 16 and 19 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

6. The tenant was not present or represented at the hearing and there was no telephone number where she could be reached. 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 stating that she had sent the notice of the hearing to the tenant by registered mail and the associated tracking history shows that it was delivered on 09 September 2020. She has had 27 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.

7. The landlord amended her application and stated that she was now seeking an order for a payment of rent in the amount of \$850.00.

Issue 1: Rent - \$850.00

Relevant Submissions

8. The landlord stated that she had entered into a 1-year, fixed-term rental agreement with the tenant on 01 June 2018 and a copy of the executed lease was submitted with her application.
9. According to that lease, the agreed monthly rent for that fixed term was set at \$935.00, due on the 1st day of each month. The landlord testified that on 01 January 2019 that monthly rent was increased to \$945.00. The landlord stated that although the rental unit is owned by [REDACTED], the unit the tenant had moved into was "held" by [REDACTED] ([REDACTED]) and she claimed that both the tenant and [REDACTED] were notified that rent was being increased to \$945.00 on 01 January 2019.
10. With her application, the landlord submitted rent records showing the payments she had received for that unit since April 2018. The landlord stated that in 2020, the [REDACTED] was paying a \$520.00 portion of the tenant's monthly rent and the tenant was responsible for paying remaining \$425.00. According to the landlord's records, the tenant did not pay her share of rent for July 2020 (\$425.00) or her share for October 2020 (\$425.00).
11. The landlord is seeking an order for a payment of \$850.00 for the period ending 31 October 2020.

Analysis

12. I pointed out to the landlord at the hearing that she was not permitted to increase the tenant's rent during the first year of her tenancy and I quote the following section of the *Residential Tenancies Act, 2018* in support of that assertion:

Rental increase

16. (1) Notwithstanding another Act, agreement, declaration, waiver or statement to the contrary, a landlord shall not increase the amount of rent payable by a tenant,

...

(b) where the residential premises is rented for a fixed term, during the term of the rental agreement

As this fixed-term agreement began on 01 June 2018, and as it was to run for 1 year, expiring on 31 May 2019, rent could not be increased prior to 01 June 2019.

13. The landlord seemed to be under the impression that, as [REDACTED] “held” this apartment and paid a portion of the tenant’s rent, the rental increase provisions set out in the Act do not apply to this tenancy. That is not correct. Section 4 of this Act states:

4. (1) The Crown is bound by this Act.

(2) Notwithstanding subsection (1), where a residential premises is owned or administered by or for the Government of Canada, the province, a municipality or an agency of one of them and rent for the residential premises is directly subsidized by the Government of Canada or the province, this Act does not apply to the

- (a) setting of rent based on the tenant's income;**
- (b) subletting of the residential premises;**
- (c) allocation of the residential premises based on household size; and**
- (d) setting of a security deposit under section 14.**

Although [REDACTED] is an agent of the province of Newfoundland and Labrador, the landlord acknowledged that [REDACTED] does not “own or administer” the residential premises under consideration here and is not the landlord in this tenancy, despite the fact that [REDACTED] subsidizes the tenant’s rent. Hence, the exemptions set out in s. 4.(2)(a) – (f) do not apply in this tenancy and the landlord is therefore bound by the rental increase restrictions set out in the Act. (I will also point out that even if [REDACTED] owned and administered the residential premises, and even if they were the landlord in this tenancy, there is nothing in this quoted section which exempts [REDACTED] from the rental increase provisions set out in the Act.)

14. Accordingly, I am of the view that since January 2019, the tenant had been improperly charged an additional \$10.00 per month in rent that the landlord was not entitled to collect. Her claim will be adjusted accordingly.
15. As the landlord is seeking an order for possession of the property, I find that she is entitled to a payment of rent to the date of the hearing and a per diem thereafter. I calculate the amount owing to be \$429.62 (\$425.00 for the period ending 30 September 2020 less the excess charges of \$210.00 (21 months x \$10.00 per month) and \$99.82 for October 2020 (\$935.00 per month x 12 months = \$11,220.00 ÷ 366 days = \$30.66 x 7 days = \$214.62)).

Decision

16. The landlord's claim for a payment of rent succeeds in the amount of \$429.62.
17. The tenant shall pay a daily rate of rent in the amount of \$30.66, beginning 08 October 2020, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Late Fees

Relevant Submissions

18. The landlord has assessed late fees.

Analysis

19. Section 15.1(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.

20. 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

21. As the tenant has been in arrears since 02 September 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

22. The landlord submitted a copy of a termination notice with her application which she stated had been taped to the tenant's door on 14 August 2020.
23. This termination notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 27 August 2020.
24. The landlord stated that the tenant has not vacated as required and she is seeking an order for vacant possession of the rented premises.

Analysis

25. 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.

26. According to the landlord's records, on 14 August 2020 the tenant was in arrears in the amount of \$850.00 and had been in arrears since the beginning of that month. Given that the landlord had improperly increased the rent for the preceding 20 months, the arrears actually totalled \$650.00 (\$850.00 - \$200.00).

27. According to the landlord's records, on 19 August 2020 the tenant made a payment of \$425.00, reducing the arrears to \$225.00. However, the tenant failed to pay off that remaining \$225.00 by 27 August 2020, the effective date set out in the termination notice.
28. As the notice meets the timeframe requirements set out in section 19 of the *Act*, it is a valid notice.

Decision

29. The landlord's claim for an order for vacant possession of the rented premises succeeds.
30. 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

31. The landlord stated that the tenant had paid a security deposit of \$467.50 and receipt of that deposit is acknowledged in the submitted lease. As the landlord's claim has been successful, she shall retain that security deposit as outlined in this decision and attached order.

Issue 5: Hearing Expenses

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

Summary of Decision

33. The landlord is entitled to the following:

- A payment of \$57.12, determined as follows:
 - a) Rent Owing\$429.62
 - b) Late Fees\$75.00
 - c) Hearing Expenses.....\$20.00
 - d) **LESS: Security Deposit.....(\$467.50)**
 - e) Total.....\$57.12

- A payment of a daily rate of rent in the amount of \$30.66, beginning 08 October 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.

15 October 2020

Date


John R. Cook
Residential Tenancies Tribunal