

Residential Tenancies Tribunal

[REDACTED] Decision 20-0558-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:16 am on 16 March 2021 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. A determination of the validity of a termination notice;
 - b. An order for a payment of rent in the amount of \$825.00;
 - c. An order for a payment of late fees in the amount of \$75.00; and
 - d. Authorization to retain the security deposit of \$618.75.

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 is section 10, 14 and 18 and of the *Residential Tenancies Act, 2018* and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

6. The tenant was not present or represented at the hearing and I was unable to reach her by telephone from the hearing room. 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 a 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 the tenant was served with notice of the hearing, by e-mail, on 04 January 2021 and a copy of that e-mail was submitted with the landlord's application. The tenant has had 70 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.

Issue 1: Validity of Notice

Relevant Submissions

7. The landlord stated that he had entered into a 1-year, fixed-term rental agreement with the tenant on 01 May 2020 and a copy of that executed lease was submitted with his application (█ #1). The agreed rent was set at \$825.00 and it is acknowledged in the lease that the tenant had paid a security deposit of \$618.75.
8. The landlord stated that on 21 June 2020 the tenant sent him an e-mail informing him that she could no longer afford to rent the property and that she would be moving at the end of the month. The landlord testified that the tenant did move at the end of June 2020, and he stated that he had regained possession of the property on 30 June 2020 after he had posted a notice of abandonment on the door.
9. The landlord is seeking a determination of the validity of the e-mail termination notice issued to him on 21 June 2020.

Analysis

10. Section 18 of the *Residential Tenancies Act, 2018* deals with the requirements of terminating a fixed-term tenancy and the relevant subsection states:

Notice of termination of rental agreement

18. (1) A tenant shall give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises

...

(c) not less than 2 months before the end of the term where the residential premises is rented for a fixed term.

11. As the term of this tenancy was not set to expire until 30 April 2021, the tenant could not, under normal circumstances, specify, in her termination notice, a termination date that was earlier than that date. Furthermore, the tenant was required to provide the landlord with at least 2 months' notice that she was ending her tenancy on 30 April 2021.
12. As the tenant specified a termination date of 30 June 2021, and as she had only provided the landlord with 9 days notice that she was vacating, her notice is invalid.

Decision

13. The termination notice issued to the landlord on 21 June 2020 is not a valid notice.

Issue 2: Rent - \$825.00

Issue 3: Late Fees - \$75.00

Relevant Submissions

14. The landlord argued that as the tenant broke her lease and as she had not provided him with a termination notice that is in accordance with the *Act*, he is entitled to an award of 1 month's rent in lieu of proper notice.
15. The landlord stated that he made no attempts to re-rent the unit after the tenant moved out and that instead the homeowner decided to carry out some renovations on the property.

Analysis

16. I determined in the previous section that the tenant had not properly terminated her rental agreement in accordance with the *Residential Tenancies Act, 2018*. As such, she is considered to have abandoned the unit (cf. section 31.(2) of the *Act*).
17. Statutory condition 4, set out in section 10 of this Act states:

Statutory conditions

10. (1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:

...

4. Mitigation on Abandonment - Where the tenant abandons the residential premises, the landlord shall mitigate damages that may be caused by the abandonment to the extent that a party to a contract is required by law to mitigate damages.

18. That is, where a tenant abandons a rental unit, a landlord must take all reasonable steps to minimize his losses as a result of the abandonment, including any losses of rental income he may suffer. Typically, a landlord is considered to have mitigated his loss of rental income when he takes steps to put new paying tenants in place as soon as possible, and this usually is done by readying the unit for occupancy and advertising it for rent as soon as possible.
19. In the case at hand, the landlord stated that he made no efforts to secure new tenants after he regained possession of the property.
20. As the landlord had not fulfilled his legal obligation to mitigate his damages, I find that he is not entitled to any compensation for any loss of rent he suffered.

Decision

21. The landlord's claim for a payment of rent and late fees does not succeed.

Issue 4: Security Deposit

22. The landlord stated that the tenant had paid a security deposit of \$618.75 on 30 April 2020 and receipt of that deposit is acknowledged in the submitted lease.
23. As the landlord's claim for rent and late fees has not succeeded, that deposit shall be refunded to the tenant as outlined in this decision and attached order.

Summary of Decision

24. The tenant is entitled to a refund of the security deposit in the amount of \$618.75.

17 June 2021

Date

[Redacted]
John R. Cook
Residential Tenancies Tribunal