

Residential Tenancies Tribunal

[REDACTED] Decision 19-071-03

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:45 pm on 27 August 2019 via teleconference.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED] [REDACTED], hereinafter referred to as "the landlord". [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 \$470.00;
 - 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*, rule 29 of *The Rules of the Supreme Court, 1986* and William & Rhodes Canadian Law of Landlord and Tenant (Carswell: Toronto, 1988).

Preliminary Matters

6. The tenant was not present or represented at the hearing and I was unable to reach him 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 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 he has been properly served. The landlord submitted an affidavit stating that the tenant was served with notice of the hearing, by e-mail, on 19 July 2019 and he has had 38 days to provide a response. The landlord also submitted a copy of that e-mail as well as a text-message he had received from the tenant in which he provided the landlord with that e-mail address. 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 his absence.

Issue 1: Rent Owing - \$470.00

Relevant Submissions

The Landlords' Position

7. The residential premise in this tenancy is a site for a mobile home. The tenant began renting that site in 2011 and the current rent is set at \$245.00 per month.
8. With his application, the landlord submitted rent records (KA #1) showing the payments he had received from the tenant since he had moved onto the rented lot.
9. According to these records, the tenant last had a zero-balance in March 2018. The records show that since that time the tenant had continued to make monthly rental payments by cheque or by pre-authorized payment, but some of those cheques and payments were reversed as there were non-sufficient funds (NSF) in the tenant's bank account. The landlord stated that for each NSF cheque his bank charged him a fee of \$25.00 and there have been 3 NSF charges since March 2018.
10. The landlord's rent records show that the tenant owes a total of \$470.00 in rent and NSF fees for the period ending 31 July 2019. Although it is not shown on these records, the landlord testified that the full rent for August 2019 was paid as required.
11. The landlord is seeking an order for a payment of \$470.00.

Analysis

12. The testimony and evidence submitted at the hearing establishes that the tenant has not paid rent as required and I accept the landlord's evidence showing that the tenant currently owes \$470.00 for the period ending 31 August 2019.

Decision

13. The landlord's claim for a payment of rent succeeds in the amount of \$470.00.

Issue 2: Late fees - \$75.00

Relevant Submissions

The Landlords' Position

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

Analysis

15. Section 15 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.

16. The minister has prescribed 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.

17. As the tenant has been in arrears since April 2018, the landlord is entitled to an award for the maximum fee of \$75.00 set by the minister.

Decision

18. 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 Landlords' Position

19. With his application, the landlord submitted a copy of a termination notice (KA #2) which he stated was delivered to the tenant by his resident manager.
20. This termination notice was issued under section 19 of the *Residential Tenancies Act, 2018*. It is dated 29 July 2019 and it has an effective termination date of 18 July 2019.
21. The landlord is seeking an order for vacant possession of the rented premises.

Analysis

22. 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.

23. As I noted in paragraph 20, above, the termination notice states that the landlord is requiring the tenant to vacate the rented lot by 18 July 2019, 10 days before the notice is dated. But as the landlord's application was filed with this section on 18 July 2019, it seems probable that the landlord had intended that the notice would have been dated on that day and that the effective termination would be 29 July 2019, 10 days after it was issued.
24. In William & Rhodes Canadian Law of Landlord and Tenant, when discussing termination notices, the authors point out that termination notices must be unambiguous and one of the principles that must be borne in mind is that "an

inaccuracy in certain matters such as the date of termination cannot be ignored even if the wrong date is inserted by a slip". They further point out that "A termination notice giving an incorrect date of termination is bad, even though both parties understood the date to which it was intended to refer" (12-109).

25. Although it is likely that the landlord's mix-up in the dates was an unintentional slip, that slip has made the notice ambiguous and it is therefore invalid.

Decision

26. The termination notice submitted with the landlord's application is invalid.
27. The landlord's claim for an order for vacant possession of the rented lot does not succeed.

Issues 4: Hearing Expenses

28. The landlord submitted a hearing expense claim form and a receipt for \$20.00 for the costs of filing this application. As the landlord's claim for rent has been successful, the tenant shall pay the landlord's hearing expense.

Summary of Decision

29. The landlord is entitled to the following:
 - A payment of \$565.00, determined as follows
 - a) Rent Owing\$470.00
 - b) Late Fees\$75.00
 - c) Hearing Expenses.....\$20.00
 - d) Total Owing to Landlord\$565.00

09 September 2019

Date

John R. Cook
Residential Tenancies Tribunal