

Residential Tenancies Tribunal

Application 2024-0800-NL

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 8:58 AM on 24 September 2024 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, attended the hearing.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant”, attended the hearing. [REDACTED], hereinafter referred to as “the tenant’s witness”, attended the hearing.

Preliminary Matters

4. The landlord electronically served the tenant ([REDACTED]) the notice of hearing (L#1) on 28 August 2024 at approximately 3:30 PM. The tenant did not dispute service. In accordance with the *Residential Tenancies Act, 2018*, this is good service.
5. The details of the claim were presented as a written fixed term rental agreement which commenced on 7 September 2023 which has evolved into a month-to-month agreement. Rent was set at \$1,550.00, due on the first of each month. There was a security deposit of \$700.00 collected in August 2023, still in the possession of the landlord. The tenant vacated the rental premises on 30 June 2024.
6. As the tenancy has ended, the disposition of the security deposit will be dealt with in this decision.

Issues before the Tribunal

7. The landlord is seeking the following:
 - An Order for compensation for rental arrears in the amount \$1,550.00
 - An Order for compensation for late fees in the amount \$75.00
 - An Order for compensation for hearing expenses in the amount \$20.00

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act*, 2018. Also relevant and considered in this case is S. 14, 15, 18, 34 and 35 of the *Residential Tenancies Act*, 2018; and Residential Tenancies Policy 12-01: Costs.

Issue 1: Rental Arrears

Landlord Position

9. The landlord is claiming \$1,550.00 of rental arrears for July 2024. He testified on 1 May 2024, he issued the tenant a no cause notice to terminate the rental agreement with a request for the tenant to be out 31 July 2024, which was the end of their fixed term agreement. He issued this notice as he would be returning to the province and would take occupancy of the rental premises. He stated on 10 June 2024, another landlord for another rental, contacted him as a reference for the tenant for a new rental premises. Following this telephone call, he testified the tenant informed him she would be vacating the rental premises before 31 July 2024.
10. The landlord testified the tenant did provide him with proper notice, he did not “forgive” rent and the tenant was responsible for rent for July 2024.
11. The landlord stated he understood the tenant would be required to pay rent at her new apartment yet maintains that she was still required to pay him rent for July 2024. At no point, upon review of the evidence and testimony, did the landlord “forgive” payment of rent, and the tenant was informed when she requested a return of the security deposit that rent for July would have to be paid in full.

Tenant Position

12. The tenant testified that on 16 June 2024 she informed the landlord she would be terminating the rental agreement by 1 July 2024. She stated the landlord was not opposed to this and “told me if I didn’t pay July rent, he would take the security deposit”. Along with her application, the tenant supplied text messages between herself and the landlord (T#1).
13. The Tenant’s witness testified he was visiting his wife from outside the country, and he witnessed the landlord informing his wife, “I would take the key back and take the security deposit”.

Analysis

14. The evidence supplied by the tenant (T#1) outlines a text conversation between the June 22nd and July 1st between the two parties beginning with the landlord stating, “you win, the only reason I am not calling the new landlord is I don’t want to see your child homeless”. The tenant testified that this led her to understand that there was an agreement to forgive the rent and vacate the premises on July 1, 2024. The landlord testified that this was taken out of context; he had previously provided her a “glowing reference” to her new landlord, and while upset with her refusal to pay him rent for July 2024, he would not contact that landlord to change his original reference. The remainder of the text messages refer to whether the tenant had vacated, keys, cleaning and a request for the tenants new mailing address.
15. Section 18(5) of the *Residential Tenancies Act, 2018*, states:

Notice of termination of rental agreement

18 (5) Notwithstanding subsections (1) to (3), a notice of termination is not required to be given where a landlord and a tenant agree in writing to terminate the rental agreement on a specific date.

16. The text messages evidence supplied by the tenant does not identify a clear and confirmed understanding between the parties and does not constitute a valid agreement between the landlord and tenant as to an early termination of the rental agreement.
17. The tenant opted to move out of the premises earlier than required; however, that does not negate responsibility to pay rent as per the Residential Tenancies Act, 2018.

Decision

18. The landlord’s claim for rental arrears succeeds in the amount of \$1,550.00.

Issue 2: Late Fees

19. The Landlord claims \$75.00 for late fees. The landlord’s claim for rental arrears succeeds for July 2024. The tenant did not pay rent for July 2024. Both parties did not dispute the tenant vacated the rental premises on 30 June 2024.
20. Section 15 of the *Residential Tenancies Act, 2018* offers clear direction regarding fees for failure to pay rent. As noted in section 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”.

21. The minister has prescribed the following:

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.

22. Late fees are applicable for the full month of July 2024 as indicated herein, the landlord issued a termination notice for a request for the tenant to be out of the rental premises by 31 July 2024.

Decision

23. The landlord's claim for late fees succeeds in the amount of \$63.00.

Issue 3: Security Deposit

24. The landlord testified the tenant paid a security deposit of \$700.00 in August 2023 prior to tenancy and he was still in possession of this deposit. This was not disputed by the tenant. As the landlord's claim for compensation has succeeded, the security deposit, plus applicable interest at the rate prescribed by the *Security Deposit Interest Calculator* shall be applied against monies owed (\$700.00 + \$5.14) and reveals the landlord shall retain \$705.14.

Decision

25. The landlord shall retain the security deposit of \$705.14 to be applied to monies owed.

Issue 4: Hearing Expenses

26. The landlord claims \$20.00 for hearing expenses. Along with his application, the landlord supplied a hearing receipt (L#2).

Decision

27. As the landlord's claim succeeds, the tenant shall be responsible for the \$20.00 hearing expenses.

Summary of Decision

28. The landlord is entitled to a payment of **\$927.86** as determined as follows:

- Rental Arrears for July 2024.....\$1,550.00
- Late Fees.....\$63.00
- **Less Security Deposit plus interest.....\$705.14**
- Hearing Expenses.....\$20.00

- Total.....**\$927.86**

27 November 2024
Date


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Residential Tenancies Office