

## Residential Tenancies Tribunal

Application 2024-0884-NL

Oksana Tkachuk  
Adjudicator

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### Introduction

1. Hearing was called at 1:47 p.m. on 16-October-2024.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, attended via teleconference.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as “the tenants”, attended via teleconference.

### Preliminary Matters

4. The landlord submitted affidavit with her application stating that she had served the tenants with the notice of the hearing personally on 17-September-2024 (LL#1). The tenants confirmed receiving the notice of the hearing on that date. In accordance with the *Residential Tenancies Act, 2018* this is good service, and the hearing proceeded.
5. There was a written fixed term rental agreement that commenced in August-2021 and converted into verbal month to month rental agreement. Rent was \$1700.00 per month with bi-weekly payments of \$850.00 due on the first and fourteenth of each month. The tenants moved out on 27-September-2024. The security deposit in the amount of \$1500.00 was collected in August-2021 and is in the landlord’s possession.
6. The landlord amended the application and is no longer seeking the validity of the termination notice and vacant possession of the rental premises. The disposition of the security deposit will be addressed in this decision.

### Issues before the Tribunal

7. The landlord is seeking:
  - Rent paid \$1200.00 and Late fees \$75.00;
  - Hearing expenses of \$20.00;
  - Security deposit of \$1500.00 to be applied against any monies owed.

## 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*.
9. Also, relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 14: Security deposit and Section 15: Fee for failure to pay rent. Also, relevant and considered in this decision are the following sections of the *Residential Tenancies Policy*: Section 2-4 Deposits, Payments and Fees and Section 12-1 Recovery of Costs.

### Issue # 1: Rent Paid \$1200.00 and Late Fees \$75.00

#### Landlord's Position

10. The landlord stated that the tenants consistently paid rent late and had difficulties making payments. Since December 2023 they agreed to a bi-weekly payment arrangement to help manage payments, however the landlord still has not received any payments on time. The landlord testified that the tenants paid \$500.00 on 5-September for September rent. The landlord is seeking remaining \$1200.00 for September rent, as well as \$75.00 in late fees.

#### Tenant's position

11. The tenant's acknowledged that they owe \$1200.00 for the rent of September but did not agree to pay late fees.

## Analysis

12. 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.*

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*

13. *Residential Tenancies Policy 2-4; Deposits, Payments and Fees* states:

#### **Late payment fee:**

*When rent is not paid on time, a landlord may charge a late fee of \$5.00 for the first day rent is in arrears and \$2.00 for each additional day that the rent remains in arrears in any consecutive number of rental periods up to a maximum of \$75.00.*

14. I accept the tenant's testimony, as they have agreed to pay \$1200.00 for the remaining rent. I asked the landlord to provide details regarding the rent payments, and the landlord stated that rent was not paid in full for July and August and that payments were consistently late during these months. The landlord further testified that the September rent payment

was also incomplete and made late. Upon asking the tenants, they stated that rent payments were made partially on July 3<sup>rd</sup>, 6<sup>th</sup>, and 30<sup>th</sup>, and in August on the 4<sup>th</sup>, 5<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup>, 19<sup>th</sup>, and 26<sup>th</sup>. The tenants also agreed that the September rent was partially paid on September 5<sup>th</sup>. Based on the testimonies of both the landlord and the tenants, I find that rent was not paid on time for at least July, August, and September. Therefore, with regards to the late fees and in accordance with Section 2-4 of the Policy as stated above, I find that the maximum late fee of \$75.00 as prescribed by the Minister is allowed.

### **Decision**

15. The landlord's claim for rent paid and late fees succeeds in the amount of \$1275.00.

### **Issue # 2: Hearing expenses \$20.00**

#### **Analysis**

16. Section 12-1 of the *Residential Tenancies Policy* states that in general, claimable costs may include the filing fee. The landlord paid \$20.00 for the application and is seeking reimbursement. The landlord submitted receipt to support the claim (LL#2). As the landlord's claim has been successful, the tenants shall pay the hearing expenses.

#### **Decision**

17. The landlord's claim for hearing expenses succeeds in the amount of \$20.00.

### **Issue #3: Security deposit applied against monies owed \$1500.00**

#### **Analysis**

18. Section 14 of the *Residential Tenancies Act, 2018* states:

#### **Security deposit**

14. (8) A security deposit is not an asset of the landlord but is held by the landlord in trust and may be used, retained or disbursed only as provided in this section.
- (9) Not later than 10 days after the tenant vacates the residential premises, the landlord shall return the security deposit to the tenant unless the landlord has a claim for all or part of the security deposit.
- (10) Where a landlord believes he or she has a claim for all or part of the security deposit,
  - (a) the landlord and tenant may enter into a written agreement on the disposition of the security deposit; or
  - (b) the landlord or the tenant may apply to the director under section 42 to determine the disposition of the security deposit.
- (11) Where a tenant makes an application under paragraph (10)(b), the landlord has 10 days from the date the landlord is served with a copy of the tenant's application to make an application to the director under paragraph (10)(b).

19. The landlord's claim for rent and late fees and hearing expenses has been successful, as per paragraphs 15 and 17 and as such, the security deposit shall be applied against monies owed. Pursuant to the *Residential Tenancies Act, 2018* the landlord must pay interest on a security deposit to the tenants for the entire period that the landlord has had the security

deposit. The interest is calculated as simple interest and is not compounded. The annual interest in 2021-2023 was 0% and is currently 1% for 2024.

## Decision

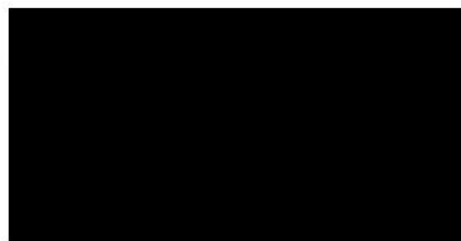
20. The landlord's claim for security deposit of \$1511.89 to be applied against monies owed succeeds.

## Summary of Decision

21. The tenants shall pay the landlord \$00.00 as follows:

|                                    |           |
|------------------------------------|-----------|
| Rent and late fees .....           | \$1275.00 |
| Hearing expenses .....             | \$20.00   |
| Less partial Security Deposit..... | \$1295.00 |
| Total .....                        | \$00.00   |

October 17, 2024  
Date



Oksana Tkachuk, Adjudicator  
Residential Tenancies Office