

Residential Tenancies Tribunal

Application 2024-1056-NL

Oksana Tkachuk
Adjudicator

Introduction

1. Hearing was called at 2:00 p.m. on 22-January-2025.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant” did not attend.

Preliminary Matters

4. The tenant was not present or represented at the hearing and I was unable to reach her by telephone at the start of the hearing. 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/she has been properly served. The landlord submitted an affidavit with her application stating that she had served the tenant with the notice of the hearing by email to [REDACTED] on 2-Janary-2025 (LL#1). In accordance with the *Residential Tenancies Act, 2018* this is good service. 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.
5. There was a written fixed term rental agreement which commenced on 1-October-2024 for one year. The tenant vacated the unit on 1-November-2024. Rent was \$800.00 per month due on 1 of each month. A security deposit of \$600.00 was collected in the beginning of the tenancy and is still in landlord’s possession.
6. The landlord amended her application to exclude other expenses and to include hearing expenses of \$20.00.

Issues before the Tribunal

7. The landlord is seeking:
 - Rent paid \$659.00;

- Late fees \$75.00;
- Hearing expenses \$20.00;
- Security Deposit of \$600.00 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 Policy*: Section 2-4 Deposits, Payments and Fees, Section 12-1 Recovery of Costs, and following sections the *Residential Tenancies Act, 2018*: Section 14: Security Deposit, Section 15: Fee for failure to pay rent.

Issue # 1: Rent paid \$659.00 Late fees \$75.00

Landlord's Position

10. The landlord testified that rent is outstanding in the amount of \$659.00 and stated that she is seeking late fees in the amount of \$75.00. The landlord stated that she received a few payments from supportive organizations, specifically [REDACTED] and [REDACTED] in October and that the total amount was \$741.00. According to the landlord, these payments were applied against security deposit of \$600.00 and remaining \$141.00 was applied towards rent. The landlord is seeking remaining \$659.00 for October rent.

Analysis

11. 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

12. Non-payment of rent is a violation of the rental agreement. Rent is required to be paid under a rental agreement by a tenant during the use or occupancy of a residential premises.
13. I accept the landlord's testimony that the rent was not paid in October in full, as the tenant was not present or represented during the hearing to provide her own testimony. According to the landlord's testimony, I accept that the amount tenant owes to the landlord is \$659.00. Therefore, with regards to the late fees and in accordance with Section 2-4 of the Policy as stated above, I find that that the late fee of \$75.00 is allowed.

Decision

14. The landlord's claim for rent and late fees succeeds in the amount of \$734.00.

Issue # 2: Hearing expenses \$20.00

Analysis

15. 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 (LL#2). As the landlord's claim has been successful, the tenant shall pay the hearing expenses.

Decision

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

Issue # 3: Security deposit to be applied against any monies owed \$600.00

Analysis

17. 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).

18. The landlord's claim for losses 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 a tenant 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 2024-2025 is 1%.

Decision

19. Security deposit plus interest to be applied against monies owed succeeds.

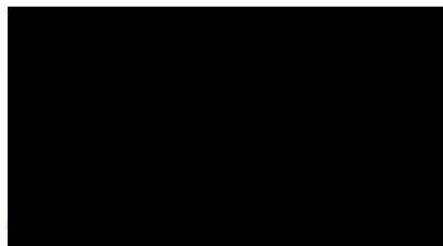
Summary of Decision

20. The tenant shall pay the landlord \$152.11 as follows:

Rent and late fees	\$734.00
Hearing expenses	\$20.00
Less Security Deposit & interest	\$601.89
Total	\$152.11

January 28, 2025

Date



Oksana Tkachuk, Adjudicator
Residential Tenancies Office