

## Residential Tenancies Tribunal

Application 2024-1062-NL

Pamela Pennell  
Adjudicator

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### Introduction

1. Hearing was called at 9:15 a.m. on 18-December-2024.
2. The applicant, [REDACTED] represented by [REDACTED] [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 she has been properly served. The landlords submitted an affidavit with their application stating that they had served the tenant with the notice of hearing electronically by email to; [REDACTED] on 2-December-2024 (LL#1). The landlords submitted proof of the email address used and proof that the email was sent on 2-December (LL#2). 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 month-to-month rental agreement which commenced somewhere around June or July 2020. The tenant vacated the unit on 6-November-2024. Rent was \$750.00 per month, due on the 1st day of each month. A security deposit of \$250.00 was paid in June 2020 and is the landlord's possession.
6. The landlord amended the application to omit *vacant possession* as the tenant has vacated the unit, decrease *rent paid* from \$1000.00 to \$373.30, and to seek *hearing expenses*.

### Issues before the Tribunal

7. The landlord is seeking:
  - Rent paid & late fees \$448.30
  - Hearing expenses \$20.00
  - Security deposit applied against monies owed \$250.00

## 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*.
9. Also, relevant and considered in this decision is the following section of the *Residential Tenancies Act, 2018*: Section 14: Security deposit and Section 15: Fee for failure to pay rent.

### Issue # 1: Rent & Late Fees Paid \$448.30

#### Relevant Submission

10. The landlord's representative testified that rent and late fees combined are outstanding in the amount of \$448.30 dating back to 1-September-2024. The landlord submitted a copy of the rental ledger to support the claim (LL#3). See copy of rental ledger below:

Date	Description of Charges	Amount Due	Amount Paid	Balance
July 1 <sup>st</sup> , 2024	Rent Charged	\$500.00	\$0.00	\$500.00
July 1 <sup>st</sup> , 2024	Payment from Income Support	\$0.00	\$500.00	\$0.00
August 1 <sup>st</sup> , 2024	Rent Charged (rental increase)	\$750.00	\$0.00	\$750.00
August 1 <sup>st</sup> , 2024	Payment from Income Support	\$0.00	\$500.00	\$250.00
August 31 <sup>st</sup> , 2024	Payment from Income Support	\$0.00	\$500.00	<span style="color: red;">-\$250.00</span>
August 31 <sup>st</sup> , 2024	Late Fees August 1 <sup>st</sup> – 31 <sup>st</sup> , 2024	\$63.00	\$0.00	<span style="color: red;">-\$187.00</span>
September 1 <sup>st</sup> , 2024	Rent Charged	\$750.00	\$0.00	\$563.00
September 5 <sup>th</sup> , 2024	Late Fees September 1 <sup>st</sup> – 5 <sup>th</sup> , 2024	\$12.00	\$0.00	\$575.00
September 20 <sup>th</sup> , 2024	Payment by EMT	\$0.00	\$250.00	\$325.00
September 20 <sup>th</sup> , 2024	Payment by EMT	\$0.00	\$250.00	\$75.00
October 1 <sup>st</sup> , 2024	Rent Charged	\$750.00	\$0.00	\$825.00
October 1 <sup>st</sup> , 2024	Payment from Income Support	\$0.00	\$500.00	\$325.00
November 1 <sup>st</sup> , 2024	Rent Charged November 1 <sup>st</sup> - 5 <sup>th</sup>	\$123.30	\$0.00	\$448.30

#### Landlord's Position

11. The landlord's representative is seeking rent and late fees to be paid in full.

## 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 12-1; Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF* states:

**Late payment fee:**

*A tenant is responsible to pay the landlord the full rent on the day the rent is due. If the rent is not paid on time, the landlord may charge the tenant a late payment fee of \$5.00 for the first day the rent is in arrears and \$2.00 for each additional day that the rent remains unpaid in any consecutive number of rental periods to a maximum of \$75.00.*

14. The tenant vacated the unit on 6-November with rent and late fees outstanding. Non-payment of rent is a violation of the rental agreement. Rent is required to be paid under a rental agreement by a tenant(s) during the use or occupancy of a residential premises. In accordance with Section 15 of the *Act* as stated above, late fees can be charged to a maximum of \$75.00 in any consecutive number of rental periods where rent is in arrears. The daily rate of rent is calculated as:  $\$750 \times 12 \text{ mths} = \$9000 / 366 \text{ days (2024)} = \$24.59 \text{ per day}$ . I find that the tenant is responsible for outstanding rent and late fees in the amount of \$447.95.

**Decision**

15. The landlord's claim for rent and late fees paid succeeds in the amount of \$447.95.

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

16. The landlord paid an application fee of \$20.00 to *Residential Tenancies* and is seeking reimbursement. The landlord submitted a copy of the receipt to support the claim (LL#4). In accordance with Section 12-1 of the *Residential Tenancies Policy*, claimable costs may include the filing fee. As the landlord has been successful in their claim for losses, I find that the tenant is responsible for hearing expenses.

**Decision**

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

**Issue # 3: Security deposit to be applied against monies owed \$250.00.**

**Analysis**

18. Section 14 of the *Residential Tenancies Act, 2018* deals with security deposits, and the relevant subsections state:

**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,

- the landlord and tenant may enter into a written agreement on the disposition of the security deposit; or
- 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).

(12) A landlord who does not make an application in accordance with subsection (11) shall return the security deposit to the tenant.

19. The landlord's claim for losses has been successful as per paragraphs 15 and 17 above 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 from 2020-2023 was 0% and is currently 1% for 2024.

### **Decision**

20. The landlord's claim to have the security deposit plus interest applied against monies owed succeeds.

### **Summary of Decision**

21. The tenant shall pay the landlord \$215.54 as follows:

Rent & late fees paid.....	\$447.95
Hearing expenses .....	20.00
<b>Less: security deposit plus interest ...</b>	<b>252.41</b>
 Total .....	\$215.54



December 30, 2024

Date

Pamela Pennell, Adjudicator  
Residential Tenancies Office