

## Residential Tenancies Tribunal

Application [REDACTED]

Decision 20-0463-05

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 1:04 pm on 13 January 2021 via teleconference.
2. The applicant, [REDACTED] was represented at the hearing by [REDACTED] [REDACTED] hereinafter referred to as "the landlord". The respondent, [REDACTED] [REDACTED] hereinafter referred to as "the tenant", also participated. He was represented by [REDACTED]

### Issues before the Tribunal

3. The landlord is seeking the following:
  - a. An order for a payment of rent in the amount of \$49.40;
  - 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 18 of the *Residential Tenancies Act, 2018*.

### Preliminary Matters

6. The landlord amended her application at hearing and stated that she was no longer seeking an order for possession of the premises as the tenant vacated on 31 December 2020. She also stated that she was now seeking an order for rent in the amount of \$465.14.

## Issue 1: Rent - \$465.14

### Relevant Submissions

#### The Landlord's Position

7. The landlord stated that she had entered into a monthly rental agreement with the tenant on 15 August 2014. The rent at that time was set at \$825.00 and it had increased to \$895.00 in 2020. The landlord also stated that the tenant had paid a security deposit of \$618.76 when he first moved into the unit. The tenant's rent was partly subsidized by the [REDACTED]  
[REDACTED]
8. The landlord served the tenant with a termination notice on 21 September 2020 and a copy of that notice was submitted with her application. That notice was issued under section 18 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 31 December 2020. The tenant vacated on that date.
9. With her application, the landlord submitted a copy of her rent records showing the payments she had received from the tenant and [REDACTED] since he had moved into the unit. According to these records, at the end of October 2020 the tenant had a rent credit of \$0.60cr. No rent was paid for November 2020 and her records show that she had only received 2 other payments since. On 04 December 2020 she received a payment of \$100.00 from the tenant and then on 07 December 2020 she received a payment of \$605.50 from [REDACTED], leaving a balance of \$1083.90.
10. The landlord's records show that she had applied the security deposit to the rent arrears, leaving a balance of \$465.14.

#### The Tenant's Position

11. The tenant did not dispute the landlord's record of the payments he had made and he acknowledged that he paid no rent for November 2020 and that the landlord had only received a total of \$705.50 in December 2020.

### Analysis

12. As the tenant acknowledged that he had not paid his rent as required and as he did not dispute the landlord's records, I find that the landlord is entitled to an order for payment of rent in the amount of \$1083.90 for the period ending 31 December 2020.

### Decision

13. The landlord's claim for a payment of rent succeeds in the amount of \$1083.90.

## **Issue 2: Late Fees**

### **Relevant Submissions**

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

### **Analysis**

15. Section 15.(1) 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 set 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 02 November 2020, 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: Security Deposit**

### **The Landlord's Position**

19. The landlord stated that the tenant had paid a security deposit on \$618.76 on 17 August 2014. According to her records, that deposit has been applied towards the rental arrears that had accumulated to 31 December 2020.

## The Tenant's Position

20. [REDACTED] pointed out that the landlord had not indicated on her application that she was seeking to retain the security.

## **Analysis**

21. I agree with [REDACTED] that the landlord had not made application to this Section to retain the security deposit. Unless she had made such an application, or unless she had entered into a written agreement with the tenant on the disposition of the deposit, she cannot retain that deposit.

22. I informed [REDACTED] at the hearing, however, that policy with this Section is that where a tenancy has ended and where a landlord is still holding a security deposit, that deposit will be disposed of in the adjudicator's decision whether or not the landlord or tenant had made an application seeking its disposition.

23. As the landlord's claim for rent has been successful, and as that amount is greater than the amount of the security deposit, the landlord shall retain that deposit and apply against the rent owing.

## **Decision**

24. The landlord shall retain the security deposit as outlined in this decision and attached order.

## **Summary of Decision**

25. The landlord is entitled to the following:

- a) Rent Owing ..... \$1083.90
- b) Late Fees ..... \$75.00
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- c) **LESS: Security Deposit..... (\$618.76)**
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- d) Total Owing to Landlord ..... **\$540.14**

16 April 2021

Date

  
John R. Cook  
Residential Tenancies Tribunal