

Residential Tenancies Tribunal

Application █

Decision 20-0126-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:45 PM on 30 June 2021 via teleconference.
2. The applicant, █ was represented at the hearing by █ Clancey, hereinafter referred to as "the landlord". The respondents, █ and █ hereinafter referred to as "the tenants", did not participate.

Issues before the Tribunal

3. The landlord is seeking the following:
 - a. An order for a payment of rent in the amount of \$1595.00;
 - b. An order for a payment of late fees in the amount of \$75.00;
 - c. Authorization to retain the security deposit of \$400.00; and
 - d. 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 19 of the *Residential Tenancies Act, 2018* and rule 29 of the Rules of the Supreme Court, 1986.

Preliminary Matters

6. The tenants were not present or represented at the hearing and I was unable to reach them by telephone. 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 a respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondents' absence so long as they have been properly served. The landlord submitted affidavits with her application stating that the tenants were personally served with notice of the hearing 25 March 2021. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.

7. The landlord amended her application at the hearing and he stated that she was no longer seeking an order for possession of the property as the tenants vacated on 30 March 2021.

Issue 1: Rent - \$1595.00

Issue 2: Security Deposit - \$400.00

Relevant Submissions

8. The landlord stated that she had entered into 1-year, fixed-term rental agreement with the tenants on 01 July 2020 and a copy of the executed lease was submitted with her application [REDACTED] #1). The agreed rent was set at \$900.00 and the landlord stated that the tenants were receiving a 1-year, move-in promotion, whereby that rent was reduced by \$105.00 each month, meaning they only had to pay \$795.00. It is also acknowledged in the lease that the tenants had paid a security deposit of \$420.00 on 01 July 2020.
9. The tenants fell into rental arrears in February 2021 and on 25 March 2021 the landlord issued the tenants a termination notice. A copy of that notice was submitted with the landlord's application [REDACTED] #2). That notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 06 April 2021. The tenants vacated on 30 March 2021.
10. The landlord submitted rent records with her application [REDACTED] #3) showing the payments she had received from the tenants since they moved into the unit. According to these records, the tenants last had a zero-balance on 31 January 2021. After that date, the tenants only made 1 payment—\$395.00 on 05 February 2021.
11. The records show that the tenants had a balance owing of \$400.00 for the end of February 2021 and with the rent for March 2021 added on, the balance increased to \$1195.00.
12. The final line of these records shows a charge of \$400.00, on 18 March 2021, which the landlord stated was the security deposit, paid online, on 07 July 2020. That deposit is added to the rent owing, increasing the overall balance to

\$1595.00. The landlord stated at the hearing that she deducted the security deposit from that amount and the total claim is now \$1195.00.

Analysis

13. I accept the landlord's claim that the tenant's had not paid rent as required and her records show that during February and March 2021, the tenants had only made 1 payment of \$395.00, leaving a balance of \$1195.00 for the period ending 31 March 2021.
14. With respect to the security deposit, I was unable to understand why the rent records show that the balance owing increased from \$1195.00 to \$1595.00 when the security deposit was taken into consideration and I was unable to comprehend the landlord's explanation. It is as if the landlord regarded the payment of the security deposit as an additional rent charge. I therefore disregard that last line of her records and I find that the total amount of rent owing is \$1195.00 for the period ending 31 March 2021 (\$400.00 owing for February and \$795.00 owing for March 2021).
15. In the submitted rental agreement it is acknowledged that the tenants had paid a security deposit of \$420.00. As it has been established that the tenants owe rent to the landlord, I find that the landlord is authorized to retain that deposit and apply it towards the rent owing.

Decision

16. The landlord's claim for a payment of rent succeeds in the amount of \$1195.00.
17. The landlord is authorized to retain the \$420.00 security deposit.

Issue 2: Late fees - \$75.00

Relevant Submissions

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

Analysis

19. 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.*

20. 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.*

Decision

21. As the tenants have been in arrears since at 02 February 2021, the landlord is entitled to an award for the maximum fee of \$75.00 set by the minister.

Summary of Decision

22. The landlord is entitled to the following:

- a) Rent Owing\$1195.00
- b) Late Fees\$75.00
- c) **LESS: Security Deposit..... (\$420.00)**
- d) Total Owing to Landlord**\$850.00**

01 December 2021

Date

