

## Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0418-05

Jacqueline Williams  
Adjudicator

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### Introduction

1. Hearing was called at 9:45 a.m. on 21-October- 2021.
2. The applicant, [REDACTED] represented by [REDACTED] [REDACTED] hereinafter referred to as "the landlord" attended by teleconference.
3. The respondents, [REDACTED] hereinafter referred to as "the tenants" did not attend.

### Preliminary Matters

4. The tenants were not present or represented at the hearing and I was unable to reach them 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 they have been properly served. The landlord submitted an affidavit ([REDACTED] #01) with his application stating that they had served the tenants with notice of the hearing; he sent it electronically, via email on October 07, 2021. Included in his evidence is a text ([REDACTED] #01) from the tenants providing the email address and a copy of the email ([REDACTED] #01) sent to the tenants, indicating the same email address. 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.
5. The landlord had included vacant possession in the application, with a termination date of September 18, 2021, however the tenants have moved from the property on or around September 20, 2021; this issue is therefore resolved.

### Issues before the Tribunal

6. The landlord is seeking:
  - Rent paid in the amount of \$1,200.00

- Security deposit applied against rent owing, \$550.00

## Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.

Also relevant and considered in this case are section 14, security deposit, and section 19: notice where failure to pay rent of the *Residential Tenancies Act, 2018*.

## Issue 1: Rent owed \$1,200.00

### Relevant Submissions

8. The landlord reports that he entered into a written rental agreement for the term of April 01, 2021 to March 31, 2022 with the tenants. The rent is set at \$1,110.00 that is due on the first day of each month. The tenants paid a security deposit of \$550.00 before taking possession on April 01, 2021. The landlord is still in possession of that security deposit.
9. The landlord submitted a rent ledger (■#02) indicating that the rent was up to date on July 10, 2021, however it fell into arrears on August 2, 2021. The table below shows rent as of August 01, 2021.
10. The landlord had served an eviction notice (■#03) to the tenants with a termination date of September 18, 2021. The landlord believes that the tenant moved on or about September 20, 2021.

## Analysis

11. The landlord indicated that he had served the tenants notice of termination and he believed that they moved on or about September 20, 2021 as shown in paragraph 5.
12. As the tenants were under a termination notice and they did move close to the date of eviction, they should not be responsible for the days that they did not have possession of the property.
13. The landlord is not sure of the date that the tenants moved; he thought it was close to September 20<sup>th</sup>. The termination date was for September 18<sup>th</sup> I will therefore find that they owe rent up to the 18<sup>th</sup>.

Rent ledger file [REDACTED]

Date	Action	Amount	total
1-Aug-21	Rent Due	\$ (1,100.00)	(1,100.00)
6-Aug-21	rent paid	\$ 600.00	(500.00)
15-Aug-21	rent paid	\$ 400.00	(100.00)
1-Sep-21	Rent due daily amount	\$ (658.88)	(758.88)

Rent calculated at a daily rate for September  

$$\$1,100.00 \times 12 \text{ months} = \$13,200.00$$

$$\$13,200.00 \text{ divided by } 365 \text{ days} = \$36.16 \text{ a day}$$

$$\$36.16 \text{ a day} \times 18 \text{ days} = \$650.88$$

### Decision

14. The tenants owe the landlord \$758.88 for rent.

### Issue 2: Security Deposit applied against monies owed \$550.00

#### Relevant Submissions

15. The landlord said the tenants paid a security deposit of \$550.00 in paragraph 8. He is still in possession of this deposit.
16. The landlord is requesting to retain the security deposit and apply it against monies owed for rent.

### Analysis

17. As per section 14.10 of the *Residential Tenancies Act, 2018*:

14. (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.
18. As the landlord's claim for rent has been successful, he shall retain the \$550.00 deposit towards the rent that is owing.

## **Decision**

19. The landlords request to retain the security deposit against rent owing succeeds.

## **Summary of Decision**

20. The landlord is entitled to:

• Rent owing.....	\$758.88
• Less Security deposit.....	<u>-550.00</u>
• Total.....	<b><u>\$208.88</u></b>

The tenant shall pay the landlord \$208.88

October 28, 2021 —  
Date

