

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0512-SJ

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:15 a.m. on 25-January-2022.
2. The applicant, [REDACTED] is represented by [REDACTED] [REDACTED], hereinafter referred to as "the landlord" she 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 him 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 has been properly served. The landlord submitted an affidavit (LL#01) with their application stating that they had served the tenant with notice of the hearing, by registered mail on 31-December-2021, the tenant did not collect this mail; it is our policy to consider registered mail delivered after 5 days. 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 his absence.
5. The landlord amended their application to reflect the current rent owing from \$1,662.80 to \$1,383.50.

Issues before the Tribunal

6. The landlord is seeking:
 - Rent \$1,383.50
 - Late fees \$75.00
 - Security deposit applied to monies owed \$442.50

- Premises vacated
- Hearing expenses reimbursed \$20.00

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*.
8. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 14: Security deposit, Section 15: Fee for failure to pay rent, and Section 19: Notice where failure to pay rent.

Issue 1: Rent \$1,383.50

Relevant Submissions

9. The landlord submitted the rental agreement (LL#02) that they have with the tenant. He took occupancy on 09-February-2021 and paid a daily rate of rent for the remainder of February. On 01-March-2021 he started a term agreement until 28-February-2022. The rental period is from the 1st to the end of each month. The rent is \$885.00, utilities included, which is due the 1st day of each month. The tenant paid a security deposit (receipt included with evidence LL#03) of \$442.50 on 12-February-2021.
10. The tenant's rent is subsidized by [REDACTED] they initially pay \$653.00 a month and the rent increases to \$683.00 each month on 01-November-2021 and the tenant is responsible to pay the remainder of the rent.
11. The landlord included a rent ledger (LL#04) with their evidence. See ledger below beginning on the most recent time that the tenant had their rent up to date and was in a surplus position, on 01-August-2021:

[REDACTED]
Rent ledger

Date	Action	Amount	total
	starting balance 30-July-2021	376.50	376.50
1-Aug-21	rent due	-885.00	-508.50
1-Aug-21	NSF cheque charge	-25.00	-533.50
1-Aug-21		885.00	351.50
1-Aug-22	NSF cheque	-885.00	-533.50
1-Sep-21	rent due	-885.00	-1418.50
3-Sep-21	[REDACTED] payment	653.00	-765.50
10-Sep-21	rent payment	220.00	-545.50
1-Oct-21	rent due	-885.00	-1430.50
1-Oct-21	[REDACTED] payment	653.00	-777.50
1-Nov-21	rent due	-885.00	-1662.50

1-Nov-21		████████ payment	683.00	-979.50
1-Dec-21	rent due		-855.00	-1834.50
1-Dec-21		████████ payment	683.00	-1151.50
1-Jan-21	rent due for daily rate January 01-25		-727.50	-1879.00
1-Jan-21		████████ payment	683.00	-1196.00

Daily rate: $\$855 \times 365 \text{ days} = \$10,620$

$\$10,620 \text{ divided by } 365 \text{ days} = \29.10

$\$29.10 \times 25 \text{ days} = \727.50

12. The landlord is requesting payment of rent from the tenant.

Analysis

13. Non-payment of rent is a violation of the rental agreement. The full rent is due on the 1st day of each month. Although the tenant is subsidized, he is responsible for a portion of the rent each month.

14. As this board doesn't consider future rent, a daily rate of rent was calculated for January to bring the rent owed, up to the date of the hearing.

15. I accept the landlord's testimony and submitted documentation showing that the tenant is in rent arrears and owes the landlord \$1,196.00 in rent.

Decision

16. The tenant shall pay the landlord \$1,196.00 for rent owed.

Issue 2: Late fees \$75.00

Relevant Submissions

17. The landlord has demonstrated to this board that the tenant owes for outstanding rent. As per the table in paragraph 11, once the August rent comes due the landlord falls into arrears as of 02-August-2021. The tenant then remains in arrears up to and including the date of the hearing.

Analysis

18. 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.*

19. As the tenant has been arrears since 02-August-2021, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

20. The landlord's claim for late fees succeeds in the amount of \$75.00.

Issue 3: Security deposit applied against monies owed \$442.50

Relevant Submissions

21. As per paragraph 9, the landlord had declared that, the tenant paid a security deposit of \$442.50; they are still in possession of that deposit. They are requesting to retain that damage deposit towards monies owed by the tenants for rent and late fees.

Analysis

22. The landlord's claim for losses has been successful, paragraphs 16 and 20, they shall retain the deposit as per Section 14 of the *Residential Tenancies Act, 2018*, see below:

- 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

Decision

23. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$442.50.

Issue 4: Vacant Possession of the Rental Premises

Relevant Submissions

24. The landlord submitted a termination notice (LL#05) that they served to the tenant.
25. The termination notice is on a “landlord’s notice to terminate early – cause” for non-payment of rent. The notice was signed on 30-August-2021 with a termination date of 10-September-2021. The landlord confirmed that the Building Caretaker posted this on the tenant’s door on 30-August-2021 as per normal operations.
26. The landlord is seeking an Order of Vacant Possession.

Analysis

27. The termination notice served by the landlord on the tenant (LL#05) is in accordance with Section 19 of the *Residential Tenancies Act, 2018*, as follows:

Notice where failure to pay rent

19. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),

(a) where the residential premises is rented from week to week and the amount of rent payable by a tenant is overdue for 3 days or more, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 3 days after the notice is served on the tenant; and

(b) where the residential premises is

(i) rented from month to month,

(ii) rented for a fixed term, or

(iii) a site for a mobile home, and

the amount of rent payable by a tenant is overdue for 5 days or more, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 10 days after the notice is served on the tenant.

.....

28. As per the table in paragraph 11, the tenant was in rental arrears on 02-August-2021 and remained in arrears up to and including the date of termination of rental agreement on 10-September-2021. Although a portion of the rent is paid, the full amount of rent is due on the 1st day of each month, as per the rental agreement (LL#02).
29. The landlord gave the tenant 10 clear days’ notice and served the notice, within the guidelines of the Act, by the Building Caretaker posting the notice on the tenant’s door.

30. The termination notice is valid and the tenant should have moved on or before 10-September-2021.

Decision

31. The landlord's claim for an order for vacant possession of the rental premises succeeds.

32. The tenant should have vacated the property on 10-September-2021. The tenant is to vacate the property immediately.

33. The tenant shall pay to the landlord any costs charged to the landlord, by the Office of the High Sheriff, should the landlord be required to have the Sheriff enforce the attached Order of Possession

Issue 5: Hearing expenses reimbursed \$20.00

34. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#06) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

Summary of Decision

35. The landlord is entitled to:

• Rent.....	1,196.00
• late fees.....	75.00
• and hearing expenses	20.00
• Less security deposit	<u>(442.50)</u>
• Totaling	<u>\$ 848.50</u>

- The landlord shall retain the security deposit and is
- Granted an order of Vacant Possession

The tenant shall:

- Pay the landlord \$848.50: the balance owed for rent, late fees and hearing expenses
- Move immediately
- Pay the landlord a daily rate of rent beginning 26-January-2022 of \$29.10 a day until such time as the landlord regains vacant possession of their property
- pay to the landlord any costs charged to the landlord, by the Office of the High Sheriff, should the landlord be required to have the Sheriff enforce the attached Order of Possession

January 28, 2022

Date

