

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0596-05

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 2:15 p.m. on 23-February-2022.
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 landlord submitted an affidavit (LL#01) with their application stating that she had served the tenant with notice of the hearing, by email at 4:13 pm on 08-February-2022. The affidavit incorrectly also mentioned that notice was delivered to an individual who is from another file. The landlord amended that the name was left there accidentally and that the service is to the email as otherwise stated. I accept this explanation. 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. The landlord amended the claim to reflect rent due to present day from \$2,985.00 to \$4,825.00.

Issues before the Tribunal

6. The landlord is seeking:
 - Rent \$4,825.00

- Late fees \$75.00
- Security deposit applied against monies owed
- Vacant possession of the rental premises
- Hearing expenses reimbursed.

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: Late fees and Section 19: Notice where failure to pay rent.

Issue 1: Rent \$4,825.00

Relevant Submissions

9. The landlord submitted the rental agreement (LL#02) into evidence. She said that the tenant took possession of the property on 15-September-2021 and paid a prorated amount of \$530.67. The agreed term of the rental agreement is 01-October-2021 – 30-September-2022. The rent is \$995.00 a month; the rental period is from the 1st day to the last day of each month and the rent is due on the 1st day of every month. The tenant paid a security deposit of \$487.50 on 26-August-2021; the receipt is provided (LL#03).
10. The landlord submitted the rent ledger (LL#04). She said that the tenant only paid the initial monies, once the agreement started on 01-October-2021 they never received any rent. The landlord said that the tenant told the secretary that she did make the October payment and the secretary requested that she bring in some proof of payment. The landlord said that there was no proof of payment provided and they haven't received any payment towards this rent.
11. The landlord is seeking rent beginning 01-October-2021 to present. Therefore, 5 months (October – February) @ \$995.00 = \$4,975.00. The landlord also pointed out on the rent ledger (LL#04) that there is work happening with the apartment patios and that this tenant was given a \$75.00 credit for both January and February for the loss of use of the patio. She directed that \$150.00 should come off the amount owed for a total of \$4,825.00 still owing, this change is reflected in the rent ledger (LL#04).

Analysis

12. Non-payment of rent is a violation of the rental agreement.
13. I accept the landlord's testimony and submitted evidence as proof of rent owed. As this tribunal doesn't consider future rent, a daily rate of rent for the month of February 2022 is calculated as follows: \$995.00 x 12 months = \$11,940.00 divided by 365 = \$32.72 per day. Rent to date of hearing is \$32.72 x 23 days = \$752.56.

14. The amount of rent owed to the landlord is \$4,582.56 as follows:

4 months @ \$995 (Oct, Nov, Dec, Jan)	\$3,980.00
February 1- 23	\$752.56
Less 2 months inconvenience	(\$150.00)
Total	\$4,582.56

Decision

15. The landlord's claim for rent succeeds in the amount of \$4,582.56.

Issue 2: Late fees \$75.00

Relevant Submissions

16. The landlord has submitted that the tenant has been in arrears beginning 02-October-2021. She has applied the late fees on her rent ledger (LL#04).

Analysis

17. 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.*

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

Decision

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

Issue 3: Security deposit applied against monies owed \$487.50

Relevant Submissions

20. As shown in paragraph 9 the landlord received a security deposit of \$487.50, she submitted a receipt for same (LL#03).
21. The landlord is requesting to retain the security deposit against monies owed.

Analysis

22. The landlord's claim for losses has been successful, paragraphs 15 and 19, and 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 \$4087.50.

Issue 4: Vacant Possession of the rental premises

Relevant Submissions

24. The landlord submitted into evidence the termination notice served on the tenant (LL#05). The notice is on a landlord's notice to terminate early – cause form, for failure to pay rent.
25. The notice is dated and signed on 01-November-2021 and the termination date is for 14-November-2021.
26. The landlord said that maintenance staff reported that the placed the notice under the tenant's door on 01-November-2021.
27. The landlord is seeking an order of vacant possession.

Analysis

28. 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),

.....

(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.

.....

29. As per paragraph 18, the tenant was in rental arrears on 02-October-2021 and remained in arrears up to the day of the hearing.

30. 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.

31. The termination notice is valid and the tenant should have moved on or before 14-November-2021.

Decision

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

33. The tenant is to vacate the property immediately.

34. 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.

35. The tenant shall pay to the landlord a daily rate of rent: \$32.72 (as per paragraph 13) beginning 24-February until such time as the landlord regains possession of the rental premises.

Issue 5: Hearing expenses reimbursed \$20.00

36. 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

37. The tenant shall pay the landlord \$4,190.06 as follows:

Rent	\$4,582.56
Late fees	75.00
Hearing expenses	20.00
Less security deposit	(487.50)
Total	\$4,190.06

The tenant shall pay to the landlord a daily rate of rent: \$32.72 beginning 24-February until such time as the landlord regains possession of the rental premises.

The tenant is to vacate the property immediately.

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.

The landlord shall retain the security deposit of \$487.50.

And the landlord will be granted an Order of Possession.

February 28, 2022

Date

