

Residential Tenancies Tribunal

Application 2022-No.85-NL

Decision 22-0085-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 10:15 a.m. on 04-March-2022.
2. The applicant, [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 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 her application, as well as, a screen shot (LL#02) showing that she had served the tenant with notice of the hearing, by text-message, on 18-February-2022. 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 made a number of amendments to her application. Initially she applied for validity of termination notice and vacant possession of the premises. On 23-February-2022 the landlord believed the property to be abandoned. She posted a “Landlord’s Notice of Abandonment.” (LL#04) The notice said that she would return on 24-February-2022 at 10:30; when she returned there was still no one there. The locksmith came at 11:00 and changed the locks. She hasn’t heard anything from the tenant since then. She has possession of her property and is not seeking an Order of Possession.

6. The landlord had also applied for compensation for damages \$900.00. After regaining possession of her property, it has become apparent to her that there are numerous damages and she hasn't finished the repairs. She is going to apply for damages at a later date when she has more information.
7. The landlord also applied for rent \$1,900.00, she amended that to reflect the current amount owed \$3,200.00. The remainder of her claims are unchanged.

Issues before the Tribunal

8. The landlord is seeking:
 - Rent \$3,200.00
 - Late fees \$136.00
 - Security deposit applied to monies owed \$975.00

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
10. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 14: Security deposit and Section 15: Fee for failure to pay rent.

Issue 1: Rent \$3,200.00

Relevant Submissions

11. The landlord submitted the rental agreement (LL#03). The tenant and his girlfriend moved in on 01-September-2019. They signed a term agreement until 31-August-2020, in February 2020 this couple separated and the tenant became the sole lease holder. The tenant did not sign another term, as requested by the landlord, subsequently, the tenant is currently in a monthly rent agreement. The rental period is from the 1st day of the month to the last, the tenant pays \$1,300.00 on the first day of the month. He paid a security deposit of \$975.00 on 01-September-2019; the landlord is still in possession of that deposit.
12. The landlord is seeking rent arrears for part of December, all of January, and up until she regains possession on 24-February-2022.
13. The landlord's submitted rent ledger (LL#05) is as follows:

Date	Action	Amount	total
1-Dec-21	rent due	1300.00	1300.00
22-Dec-21	rent paid	-700.00	600.00
1-Jan-22	rent due	1300.00	1900.00
1-Feb-22	daily rate 01-23 Feb.	969.99	2869.99

Daily rate 1300 x 12 months = 15,600 divided by 365 days = \$42.13 a day x 23 days = \$969.99

Analysis

14. Nonpayment of rent is a violation of the rental agreement.
15. I accept the landlord's testimony and submitted documents of rental arrears. The tenant shall pay the landlord for rent totaling \$2,869.99.

Decision

16. The landlord's claim for rent succeeds in the amount of \$2,869.99.

Issue 2: Late fees \$136.00

Relevant Submissions

17. The landlord had applied late fees to her submitted rent ledger (LL#05). The landlord said that the tenant was in arrears as of 02-December-2021 and remained in arrears until she took possession of the house.
18. The landlord applied late fees of \$75.00 for December and \$61.00 for January.

Analysis

19. 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.

20. Late fees can be applied beginning 02-December-2021. On December 2nd the landlord may apply a \$5.00 late fee and then a fee for the next 35 days of \$2.00 a day. Once the maximum fee of \$75.00 set by the minister, late fees can no longer be applied.
21. The landlord is entitled to the maximum fee of \$75.00.

Decision

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

Issue 3: Security deposit applied \$975.00 to monies owed

Relevant Submissions

23. The landlord stated in paragraph 11 that the tenant paid a security deposit of \$975.00 and that she is still in possession of that deposit. She is applying to have the deposit applied to monies owed.

Analysis

24. The landlord's claim for loss has been successful, paragraphs 16 and 22, and she 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

25. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$975.00.

Summary of Decision


26. The tenant shall pay the landlord \$1,969.99, for rent and late fees as follows:

- Rent \$2,869.99
- Late fees \$75.00
- Less security deposit (\$975.00)
- Total..... \$1,969.99

The landlord shall retain the security deposit of \$975.00.

March 8, 2022

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office