

Residential Tenancies Tribunal

Application 2022-No.89-NL

Decision 22-0089-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:15 a.m. on 14-April-2022.
2. The applicant, [REDACTED] represented by [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 their application stating that they had served the tenant with notice of the hearing, on 01-March-2022 via email. The landlord said that the tenant provided the email address to them when he filled out his application to rent the apartment. 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.

Issues before the Tribunal

5. The landlord is seeking:
 - Rent \$6,900.00
 - Security deposit applied against monies owed \$2,550.00
 - Hearing expenses reimbursed \$20.00

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
7. 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 \$6,900.00

Relevant Submissions

8. The landlord submitted the rental agreement (LL#02) that they had with the tenant. The agreement is for a year term from 01-April-2021 until 31-March-2022. The tenant was living in another one of their apartments and took occupancy of this apartment a few days before 01-April-2022. The tenant pays \$3,400.00 a month rent. His rental period is from the first day of the month until the last. Rent is due the first day of each month. The tenant paid a security deposit of \$2,550.00 on 23-March-2022. The landlord is still in possession of the deposit.
9. The landlord said that the tenant had been in rent arrears during the fall of 2021. She submitted a rent ledger (LL#03). She indicated that as of 01-December-2021 the tenant was up to date with his payments.
10. The landlord said that when the preauthorized payment came out for December's rent, they received a non-sufficient funds alert. This also occurred in January 2022. They did try an additional time each month to withdraw the payment.
11. The landlord applied a \$25.00 fee each time the payment failed. The fee is in accordance with the signed rental agreement (LL#02). See rent ledger below:

Rent ledger
2022-No.89-NL

Date	Action	Amount	total
1-Dec-21	preauthorized payment	-3400.00	-3400.00
1-Dec-21	rent due	3400.00	0.00
7-Dec-21	NSF	3400.00	3400.00
7-Dec-21	Returned check charge	25.00	3425.00
10-Dec-21	preauthorized payment	-3425.00	0.00
15-Dec-21	NSF	3425.00	3425.00
15-Dec-21	Returned check charge	25.00	3450.00
1-Jan-22	preauthorized payment	-3400.00	50.00
1-Jan-22	rent due	3400.00	3450.00
11-Jan-22	NSF	3400.00	6850.00
11-Jan-22	Returned check charge	25.00	6875.00

17-Jan-22	preauthorized payment	-3400.00	3475.00
17-Jan-22	NSF	3400.00	6875.00
17-Jan-22	Returned check charge	25.00	6900.00

12. The landlord said that they served the tenant with a “Landlord’s notice to terminate early – cause” notice for failure to pay rent (LL#03). The notice was signed and dated for 10-January-2022 with a termination date of 22-January-2022. The tenant did move on the termination date.
13. The landlord is seeking the rent and returned check charges totaling \$6,900.00 as per the rent ledger (LL#03).

Analysis

14. Non-payment of rent is a violation of the rental agreement (LL#02). The tenant should pay the full amount of rent on the 1st day of each month. The rental agreement also lists a returned cheque charge will be applied in the amount of \$25.00 each time a cheque is returned for insufficient funds.
15. The landlord did serve the tenant with a termination notice for 22-January-2022 and the landlord acknowledges that the tenant did move on that day. The payment of rent is for use of the apartment, which the tenant is no longer entitled to do after 22-January-2022; he therefore should not be expected to pay rent after that time. I therefore find that the tenant will be expected to pay a daily rate for January up to the date of termination, as follows: \$3,400.00 x 12 months \$40,800.00 a year. \$40,800.00 divided by 365 days = \$111.78 a day. \$111.78 a day x 22 days = \$2,459.16.
16. The tenant shall pay the landlord \$5,959.16 for rent as follows:
 - Rent ledger total \$6,900.00
 - Less January rent (3,400.00)
 - Plus daily rate January..... 2,459.16
 - Total \$5,959.16

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17. The landlord’s claim for rent succeeds in the amount of \$5,959.16.

Issue 2: Security deposit applied to monies owed \$2,550.00

Relevant Submissions

18. As per paragraph 8, the landlord has declared that, the tenant paid a security deposit of \$2,550.00; they are still in possession of that deposit. They are requesting to retain that damage deposit towards monies owed by the tenant for rent.

Analysis

19. The landlord's claim for losses has been successful, paragraph 17, and they shall retain the deposit as per Section 14 of the *Residential Tenancies Act, 2018*, see below:

Security deposit

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

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20. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$2,550.00

Issue 3: Hearing expenses reimbursed \$20.00

21. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#05) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

Summary of Decision

22. The tenant shall pay the landlord \$3,429.16, as follows:

- Rent \$5,959.16
- Security deposit applied (2,550.00)
- Hearing expenses \$20.00
 - Total \$3,419.16

April 20, 2022

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office