

Residential Tenancies Tribunal

Application 2022-No.102-NL

Decision 22-0102-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:16 a.m. on 12-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.
4. [REDACTED] of [REDACTED] attended the conference, but did not participate.

Preliminary Matters

5. 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 his application stating that he had served the tenant with notice of the hearing, electronically on 09-March-2022 to the tenant's email. The landlord said that the tenant provided him the email address and they used it for communication. 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.
6. The landlord amended his application to increase late fees from \$65.00 to \$75.00 to reflect the current amount anticipated due to the lateness of rent payment.

Issues before the Tribunal

7. The landlord is seeking:
 - Rent \$1,350.00
 - Late fees \$75.00
 - Security deposit applied against monies owed \$1,012.50
 - Other \$207.81

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
9. 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, Section 18: Notice of termination of rental agreement and Section 31: Abandonment of residential premises by tenant.

Issue 1: Rent \$1,350.00

Relevant Submissions

10. The landlord submitted a rental agreement (LL#02) with the application. They entered a written term agreement with the tenant from 31-March-2021 until 31-July-2021. They are currently in a monthly agreement. The tenant pays \$1,350.00 a month. The rental period is from the 1st day of the month until the last day; rent is due the 1st day of each month. The landlord said that the tenant paid a security deposit of \$1,012.50 on 31-March-2021 and they are still in possession of the deposit.
11. The landlord submitted a rent ledger (LL#05) showing that the tenant had consistently paid the rent, however, in January 2022, no rent was paid.
12. The landlord said that the tenant had sent them a Tenant's notice to terminate standard. The notice is signed and dated on 01-January-2022 with a termination date of 25-January-2022. The landlord also submitted the envelope that contained the notice (LL#05) which shows the tracking number. The tracking number shows that the notice was mailed on 21-January-2022 and received on 02-February-2022.
13. The landlord said he was told that the unit was empty so he posted a Landlord's notice of abandonment on 01-February-2022 with an entry date of 03-February-2022. On 02-February-2022 he received the tenant's notice (paragraph 12).
14. The landlord doesn't believe that the notice is valid and he is claiming the rent due for January 2022.

Analysis

15. Non-payment of rent is a violation of the rental agreement (LL#02). I accept the landlord's testimony and evidence that the tenant did not pay rent for January. I also agree that the notice provided by the tenant is not valid.
16. The tenant shall pay the landlord the rent owed for January.

Decision

17. The landlord's claim for rent succeeds in the amount of \$1,350.00.

Issue 2: Late fees \$75.00

Relevant Submissions

18. The landlord has proven, paragraph 15, that the tenant has been in rental arrears as of 02-January-2022 and is seeking the maximum allowed late fees.

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. As the tenant has been arrears since 02-January-2022, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 3: Security deposit applied against monies owed \$1,012.50

Relevant Submissions

22. The landlord stated in paragraph 10 that the tenant paid a security deposit of \$1,012.50 on 31-March-2021 and they are still in possession of the deposit. The landlord is requesting to retain the security deposit against monies owed.

Analysis

23. The landlord's claim for losses has been successful, paragraphs 17 and 21, 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

Decision

24. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$1,012.50.

Issue 4: Hearing expenses reimbursed \$20.00

25. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#07) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

Summary of Decision

26. The tenant shall pay the landlord \$432.50 as follows:

- Rent \$1,350.00
- Late fees 75.00
- Security deposit applied (1,012.50)
- Hearing expenses 20.00
 - Total \$432.50

The landlord shall retain the security deposit of \$1,012.50.

April 18, 2022

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office