

Residential Tenancies Tribunal

Application 2022 No. 197 NL

Decision 22-0197-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:17 AM on 19 April 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as the “landlord” participated in the hearing.
3. The landlord was initially a tenant in the rental premises for a fixed term agreement of one year (1 April 21 – 31 March 2022). She then entered into a written sublet agreement with her own tenant, the respondent, effective 01 November 2021.
4. The respondent, [REDACTED], hereinafter referred to as “the tenant”, did not participate.
5. In a proceeding under the *Residential Tenancies Act*, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicants have to establish that their account of events is more likely than not to have happened.

Issues before the Tribunal

6. The landlord is seeking the following:
 - An order for a payment of rent in the amount of \$900.00,
 - An order for a payment of late fees in the amount of \$75.00, and
 - Authorization to retain the security deposit of \$637.50.

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 case is sections 14, 15, 18, 19 and 21 of the *Residential Tenancies Act, 2018* and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

9. The tenant was not present or represented at the hearing and I was unable to reach her by telephone prior to 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*.
10. 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.
11. The landlord submitted an affidavit with her application stating that she sent the application and notice of the hearing to the tenant, by email on 7 April 2022 (L#1). When asked how she came to know this was the tenant's email, the landlord said it was provided on the sublet rental agreement for use.
12. As the tenant was properly served, and any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.

Issue 1: Rent - \$900.00

Relevant Submissions

13. The landlord testified that rental premises was originally leased to herself for a fixed term lease for 1 April 2021 through to 31 March 2021. In addition to her testimony, the landlord provided a written statement regarding her own initial use of the rental premises (L#2).
14. The landlord then vacated the rental premises early due to family reasons and entered into a sublet agreement for the rental premises that ran from 01 November 2021 to 31 March 2022. A written copy of this sublet rental agreement was provided (L#3).
15. The landlord testified that she identified the respondent (tenant) as a possible tenant and provided their particulars to the property manager for approval. The property manager was then said to have conducted a background check prior to approving the sublet agreement for use of the rental premises. By signing this sublet agreement, the landlord became "landlord" to the named tenant in this dispute.

16. When asked her expectation for involvement with the rental premises following the sublet agreement, the landlord testified that she would collect rent and submit rent to the property manager and that she would also forward messages received from the tenant to the property manager.
17. The landlord provided a rental ledger with her application (L#4). She testified that payment for December 2021 was received 8 days late and that only partial payment of rent was received for January 2022 (\$800). The landlord testified that this January payment was received on 11 January 2022 with assurances that the remaining \$50 would be received the week following.
18. Regarding current occupancy in the rental premises, the landlord testified that she understands the unit to be vacant. She stated that the property manager is looking to complete some repairs related in part to mold concerns raised by the tenant.
19. When asked when the tenant ended her sub-lease agreement, the landlord testified that the tenant requested on 1 February 2022 to terminate her rental agreement.
20. The landlord further testified that she forwarded this termination request to the property manager and was not subsequently involved in the termination because she was occupied with the birth of her own child.
21. The landlord agreed to a 28 February 2022 termination for the tenant in this application.

Analysis

22. The sublet agreement was listed as a fixed term agreement, however, subsection 8(1)(c) of the *Act* defines a fixed term as “not less than 6 months”. This is an important distinction because it establish the tenant’s standard obligation for providing notice of termination of their tenancy in accordance with the *Act*.
23. A 5 month rental agreement such as the sublet agreement, is a month-to-month agreement, subject to the termination notice requirements of a month- to-month rental agreement. As per subsection 18(1)(b) of the *Act*:

18. (1) A tenant shall give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises

(b) not less than one month before the end of a rental period where the residential premises is rented from month to month;
24. Records provided by the landlord show that the tenant owes \$900.00 for the month ending 28 February 2022. I accept the applicant’s claim that the property manager accepted a termination date of 28 February 2022.

25. I accept that the tenant has not paid her rent full rent as required through to the accepted termination date of 28 February 2022. As such, I find that rent is owned by the tenant to 28 February 2022.
26. I calculate the amount owing to be \$900.00 (\$50.00 owing for the month ending 31 January 2022 and \$850.0 for the month ending 28 February 2022).

Decision

27. The applicant's claim for a payment of rent succeeds in the amount of \$900.00.

Issue 2: Late Fees - \$75.00

Analysis

28. 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.

29. As the tenant has been arrears since 2 January 2022, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 3: Security Deposit \$637.50

Relevant Submissions

31. With her application, the landlord submitted a copy of an Etransfer receipt dated 1 November 2021 in the amount of \$1,487.50 (L#5). The landlord testified that this amount included \$850.00 in rent for November 2021 and \$637.50 for a security deposit.
32. Receipt of this security deposit was also noted in part 8 of the sublet agreement that was provided (L#3).

Analysis

33. Section 14, sub 10, 12 and 14 of the *Residential Tenancies Act, 2018* states:

(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.

(12) A landlord who does not make an application in accordance with subsection

(11) shall return the security deposit to the tenant.

(14) Where a landlord does not make an application under subsection (11), he or she is not prohibited from making an application under section 42 other than an application with respect to a claim against the security deposit.

34. According to the applicant's records, a security deposit in the amount of \$637.50 was collected from the tenant on 1 November 2021.
35. The landlord testified that no communication has been received from the tenant regarding return or used of the security deposit collected.

36. The landlord is seeking to use the full amount of the security deposit against rent monies owing. As the amount owing to the landlord for rent and late fees is in excess of the security deposit collected, I find that the landlord is entitled to use of the full amount of the security deposit.

Decision

37. As the applicant's claim has been successful, she shall retain of the security deposit to be used against rent money owing.

Summary of Decision

38. The landlord is entitled to the following:

- A payment of \$337.50, determined as follows:

a) Rent Owing.....	\$900.00
b) Late Fees	\$75.00
c) LESS: Security Deposit.....	(\$637.50)
d) Total.....	<u>\$337.50</u>

29 April 2022

Date



Jaclyn Casler
Residential Tenancies Tribunal