

Residential Tenancies Tribunal

Application 2022-No.363 -NL

Decision 22-0363-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:15 a.m. on 16-June-2022.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord" attended by teleconference.
3. The respondents [REDACTED] and [REDACTED], hereinafter referred to as "the tenants" did not attend.
4. The landlord provided a witness, [REDACTED], hereinafter referred to as "the witness."

Preliminary Matters

5. The tenants were not present or represented at the hearing and I was unable to reach them 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 respondents fail to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondents' absence so long as they have been properly served. The landlord submitted two affidavits (LL#01 and LL#02) with the application stating that she had served the tenants with notice of the hearing, in person on 31-May-2022. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.
6. The landlord amended his application to remove premises vacated, increase rent owed from \$2,100.00 to \$3,250.00, increase late fees from \$41.00 to \$75.00 and she requested to add security deposit applied to monies owed \$900.00.

Issues before the Tribunal

7. The landlord is seeking:

- Rent \$3,250.00
- Late fees \$75.00
- Utilities/cable \$110.00
- Security deposit applied against monies owed \$900.00
- Hearing Expenses \$20.00

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, and Section 15: Fee for failure to pay rent.

Issue 1: Rent 3,250.00

Relevant Submissions

10. The landlord submitted a rental agreement (LL#03) with the application. She entered a written term agreement with the tenants from 01-March-2022 until 29-February-2023. The tenants pay \$1,800.00 a month rent which included internet. The rental period is from the 1st day of the month until the last day; rent is due in two installments: half on the 1st day of each month and half on the 15th day of each month. The landlord said that the tenants paid a security deposit of \$900.00 in installments, the final payment was received on 22-February-2022; she is still in possession of the deposit.
11. The landlord said that she served the tenants with a termination notice due to failure to pay rent with a termination date of 04-May-2022. The tenants later sent her an email (LL#04) saying that they would be moving the end of the month. They did move on 01-June-2022.
12. The landlord said that when the tenants rent fell into arrears, they told her it was due to conditions in the house. The landlord provided a witness who once was a tenant at the house and has returned to the house to visit another previous tenant since he moved. The witness said that there are no issues with the home and that he would absolutely rent there again.
13. The landlord submitted a rent ledger (LL#05). The ledger included rent, late fees and cable bill fees. The details of the rent payments are as follows:

Rent ledger
2022-No.363-NL

Date	Action	Amount	total
1-Mar-22	rent due	900.00	900.00
1-Mar-22	payment	-900.00	0.00

15-Mar-22	rent due		900.00	900.00
15-Mar-22		payment	-650.00	250.00
24-Mar-22		payment	-250.00	0.00
1-Apr-22	rent due		900.00	900.00
7-Apr-22		payment	-600.00	300.00
15-Apr-22	rent due		900.00	1200.00
1-May-22	rent due		900.00	2100.00
15-May-22	rent due		900.00	3000.00

14. The tenants moved on 01-June-2022 (paragraph 11) landlord is seeking the full amount of rent owed.

Analysis

15. Non-payment of rent is a violation of the rental agreement (LL#03). I accept the landlord's testimony and evidence that the tenant did not pay rent totaling \$3,000.00.

16. The tenant shall pay the landlord the rent owed totaling \$3,000.00.

Decision

17. The landlord's claim for rent succeeds in the amount of \$3,000.00.

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-April-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-April-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: Utilities/Cable \$110.00

Relevant Submissions

22. The landlord stated, in paragraph 10 that internet was included in the rental agreement (LL#03). She said that the tenant requested that the landlord purchase the cable package and that they would reimburse her the additional cost. The landlord showed in the text thread provided (LL#04) the record of this discussion. The details that were agreed upon, was that the tenant would pay an additional \$27.50 on the 1st and 15th, with their rent, for the added cost of cable.

23. The landlord said that they were estimating the cost of the cable to be approximately \$55.00 a month. The landlord said she never received any payment for the cable, she subsequently had the cable cancelled the end of April due to non-payment from the tenants.

24. The landlord provided her Rogers bill prior to adding cable (LL#06) \$96.59 to show the base amount. Then she provided the two following bills for March and April (LL#07) \$151.32 and (LL#08) \$138.81. The landlord would like the additional charges reimbursed.

• March \$151.32 – 96.59 =	\$54.73
• April \$138.81 – 96.59 =	<u>\$42.22</u>
• Total	<u>\$96.95</u>

25. The landlord said that the April bill was reduced do to a credit on her billing; she however said that she would accept the lesser amount as stated on the billing.

26. The landlord is requesting full reimbursement of \$96.95 owed for cable.

Analysis

27. The landlord has shown through her testimony and the text messages provided (LL#04) that the tenants requested cable be purchased and she made a promise of payment for the purchase.
28. The tenant owes the landlord for the cable and shall pay the full cost of \$96.95.

Decision

29. The landlord's claim for reimbursement for the cable succeeds in the amount of \$96.95.

Issue 4: Security deposit applied against monies owed \$900.00

Relevant Submissions

30. The landlord stated in paragraph 10 that the tenant paid a security deposit of \$900.00 on 22-February-2022 and she is still in possession of the deposit. The landlord is requesting to retain the security deposit against monies owed.

Analysis

31. The landlord's claim for losses has been successful, paragraphs 17, 21 and 29, and she 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

32. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$900.00.

Issue 5: Hearing expenses reimbursed \$20.00

33. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#09) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

Summary of Decision

34. The tenant shall:

- Pay the landlord \$2,271.95 as follows:
 - Rent \$3,000.00
 - Late fees 75.00
 - Cable..... 96.95
 - Security deposit applied (900.00)
 - Total \$2,271.95

The landlord

- Shall retain the security deposit of \$900.00

June 20, 2022

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office