

Residential Tenancies Tribunal

Application 2022-No.382 -NL

Decision 22-382-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 2:18 p.m. on 24-May-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 her 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 she 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 10-May-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 her absence.
5. The landlord amended his application to include security deposit applied against monies owed.
6. There has been a previous decision on this tenancy 22-0259-00. The result of that decision is the landlord was awarded rent for April 2022 and May 2022, totalling \$1,275.00.

Issues before the Tribunal

7. The landlord is seeking:

- Late fees \$75.00
- Security deposit applied against monies owed \$425.00
- Vacant possession of rental premises
- 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, Section 15: Fee for failure to pay rent, and Section 19: Notice where failure to pay rent.

Issue 1: Late fees \$75.00

Relevant Submissions

10. The landlord submitted a rental agreement (LL#02) with the application. He entered a written term agreement with the tenant from 01-March-2022 until 29-February-2023. The tenant pays \$850.00 rent 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 \$425.00 on 02-March-2022 and he is still in possession of the deposit.
11. The landlord has been previously awarded rent owed (22-0259-00) (paragraph 6). At the time of the previous application, he did not seek late fees. To date, the landlord says he has not received a rent payment or has certified his order. The tenant has been in arrears beginning 02-April-2022; he is seeking the maximum allowed late fees.

Analysis

12. 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.*

13. 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

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

Issue 2: Security deposit applied against monies owed \$425.00

Relevant Submissions

15. The landlord stated in paragraph 10 that the tenant paid a security deposit of \$425.00 on 02-March-2022 and he is still in possession of the deposit. The landlord is requesting to retain the security deposit against monies owed.

Analysis

16. The landlord's claim for loss has been successful, paragraph 14, and he 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

17. The landlords' claim to retain the security deposit against monies owed succeeds.

Issue 3: Vacant Possession of the Rental Premises

Relevant Submissions

18. The landlord submitted a termination notice (LL#04). It is on a "landlord's notice to terminate early – cause" form for failure to pay rent. The notice is signed and dated for 06-May-2022, with a termination date of 17-May-2022.
19. The landlord said that he posted the notice on the tenant's door on 06-May-2022.

Analysis

20. The notice was served under Section 19, of the *Residential Tenancies Act, 2018*, which states:

Notice where failure to pay rent

19. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),

.....

(b) where the residential premises is

- (i) rented from month to month,**
- (ii) rented for a fixed term, or**
- (iii) a site for a mobile home, and**

the amount of rent payable by a tenant is overdue for 5 days or more, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 10 days after the notice is served on the tenant.

.....

(4) In addition to the requirements under section 34, a notice under this section shall

(a) be signed by the landlord;

(b) state the date on which the rental agreement terminates and the tenant is required to vacate the residential premises; and

(c) be served in accordance with section 35.

.....

21. The tenant was in rent arrears in excess of the 5 days when the notice was served. On the date of termination, the tenant was still in arrears. The termination notice meets the requirements of the Act and is a valid notice. The notice was served in accordance of the Act.

22. The tenant should have vacated the property by 17-May-2022.

Decision

23. The landlord's claim for an order for vacant possession succeeds.

24. The tenant shall vacate the premises immediately.

25. The tenant shall pay to the landlords any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

Issue 4: Hearing expenses reimbursed \$20.00

26. 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

27. The tenant shall:

- Vacate the property immediately
- Pay to the landlords any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

The landlord

- Will retain \$95.00 of the security deposit as follows:
 - Late fees\$75.00
 - Hearing expenses20.00
 - Security deposit applied(425.00)
 - Security deposit remaining . \$330.00
- Will be awarded an Order of Possession.

May 27, 2022

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office