

Residential Tenancies Tribunal

Application 2022-No.387 -NL

Decision 22-0387-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:11 a.m. on 22-June-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 when I reached him by telephone at the start of the hearing, he informed me that he would not be attending. 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, by prepaid registered mail on 13-May-2022. The landlord provided the tracking number and it showed that the package wasn't picked up and subsequently returned to sender. It is our policy to consider prepaid registered mail delivered after 5 days. 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.
5. The landlord amended their application to remove premises vacated as the tenant has moved, she also requested that security deposit applied to monies owed, \$348.50 be added to the application.

Issues before the Tribunal

6. The landlord is seeking:
 - Rent \$1,403.00.
 - Late fees \$75.00
 - Security deposit applied against monies owed \$348.50

- Hearing Expenses \$20.00

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 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 \$1,403.00

Relevant Submissions

9. The landlord relayed the details of the rental agreement. They entered a written term agreement with the tenant from 01-July-2020 until 30-June-2021. They were in a monthly agreement. The tenant pays \$770.00 a month. Each month the tenant receives a rebate of \$63.00 for a promotion the landlord is offering. 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 \$348.50 on 14-July-2020; they are still in possession of the deposit.
10. The landlord said that they served the tenant a termination notice for the 17-May-2022. The tenant contacted them on 19-May-2022 and said he could move the end of the month. They accepted the notice and the tenant vacated the property on 31-May-2022.
11. The landlord submitted a rent ledger (LL#02) as follows:

Rent ledger
2022-No.387-NL

Date	Action	Amount	total
1-Jun-21	rent due	760.00	760.00
1-Jun-21	promotional credit	-63.00	697.00
23-Jun-21	cheque	-697.00	0.00
1-Jul-21	rent due	770.00	770.00
1-Jul-21	promotional credit	-64.00	706.00
14-Jul-21	cheque	-707.00	-1.00
1-Aug-21	rent due	770.00	769.00
1-Aug-21	promotional credit	-64.00	705.00
20-Aug-21	cheque	-717.00	-12.00
1-Sep-21	rent due	770.00	758.00
1-Sep-21	promotional credit	-64.00	694.00
1-Oct-21	rent due	770.00	1464.00
1-Oct-21	promotional credit	-64.00	1400.00

5-Oct-21		cheque	-717.00	683.00
28-Oct-21		cheque	-707.00	-24.00
1-Nov-21	rent due		770.00	746.00
1-Nov-21	promotional credit		-64.00	682.00
24-Nov-21		cheque	-707.00	-25.00
1-Dec-21	rent due		770.00	745.00
1-Dec-21	promotional credit		-64.00	681.00
1-Jan-22	rent due		770.00	1451.00
1-Jan-22	promotional credit		-64.00	1387.00
7-Jan-22		cheque	-707.00	680.00
1-Feb-22	rent due		770.00	1450.00
1-Feb-22	promotional credit		-64.00	1386.00
1-Feb-22		cheque	-650.00	736.00
3-Feb-22		cheque	-57.00	679.00
23-Feb-22		cheque	-575.00	104.00
1-Mar-22	rent due		770.00	874.00
1-Mar-22	promotional credit		-64.00	810.00
1-Mar-22		cheque	-132.00	678.00
1-Apr-22	rent due		770.00	1448.00
1-Apr-22	promotional credit		-64.00	1384.00
4-Apr-22		cheque	-687.00	697.00
1-May-22	rent due		770.00	1467.00
1-May-22	promotional credit		-64.00	1403.00

12. The landlord said that the tenant has been in and out of arrears for most of his tenancy. He fell into arrears in December 2021 and has remained in arrears since that time.
13. The landlord is seeking the full amount of rent owed \$1,403.00.

Analysis

14. Non-payment of rent is a violation of the rental agreement. I accept the landlord's testimony and evidence that the tenant did not pay rent totaling \$1,403.00.
15. The tenant shall pay the landlord the rent owed totaling \$1,403.00.

Decision

16. The landlord's claim for rent succeeds in the amount of \$1,403.00.

Issue 2: Late fees \$75.00

Relevant Submissions

17. The landlord has proven, paragraph 14, that the tenant has been in rental arrears as of 02-December-2021 and is seeking the maximum allowed late fees.

Analysis

18. 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.*

19. As the tenant has been arrears since 02-December-2021, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 3: Security deposit applied against monies owed \$348.50

Relevant Submissions

21. The landlord stated in paragraph 9 that the tenant paid a security deposit of \$348.50 on 14-July-2020 and they are still in possession of the deposit. The landlord is requesting to retain the security deposit against monies owed.

Analysis

22. The landlord's claim for losses has been successful, paragraphs 16 and 20, 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

23. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$348.50.

Issue 4: Hearing expenses reimbursed \$20.00

24. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#03) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

Summary of Decision

25. The tenant shall:

- Pay the landlord \$1,149.50 as follows:
 - Rent \$1,403.00
 - Late fees 75.00
 - Hearing expenses 20.00
 - Security deposit applied (348.50)
 - Total \$1,149.50

The landlord

- Shall retain the security deposit of \$348.50.

July 4, 2022

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office