

Residential Tenancies Tribunal

Application 2022 No. 0576 NL

Decision 22-0576-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 2:00 PM on 10 August 2022 via teleconference.
2. The applicant, [REDACTED], as represented by [REDACTED], hereinafter referred to as "the landlord", participated in the hearing.
3. The respondent, [REDACTED], hereinafter referred to as "the tenant", did not participate in the hearing.
4. An affidavit of service was provided confirming that the tenant was served electronically of the claim against them and proof of service was provided (L# 1). The landlord testified that they knew to serve electronically because this was the address provided for communications on the rental agreement.
5. The details of the claim were presented as a month-to month agreement operating since October 2020 with current rent set at \$950.00 per month and a security deposit of \$372.00 collected. A copy of the written rental agreement was provided (L#2).
6. 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

7. The landlord is seeking the following:
 - Payment of rent in the amount of \$1,587.50;
 - Payment of late fees in the amount of \$75.00;
 - Vacant possession of the rental premises; and
 - An order for the security deposit in the amount of \$372.00 to be applied against monies owing.

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 case is sections 14, 15 and 19 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

10. The tenant was not present or represented at the hearing and I was unable to reach them by telephone. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*.
11. 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 they have been properly served.
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 their absence.
13. The landlord amended her application to remove the request for vacant possession as the tenant vacated on 31 July 2022.

Issue 1: Payment of Rent (\$1,587.50)

Relevant Submissions

14. The landlord submitted a copy of their rent ledger (L#3) and testified, that as shown on the ledger, \$1,587.50 is owing in rent. The landlord testified that six month notice of a rental increase took effect in March 2022 and that the tenant began experiencing their most recent problems with paying rent in April 2022.

15. The landlord also testified that the tenant allegedly asked to apply their security deposit against monies owing for rent in June 2022, and that the tenant has not paid rent since 22 June 2022 as a result of the landlord refusing this request.

Analysis:

16. I accept the landlord's claim and evidence that there were rental arrears in the amount of \$1,587.50 as at 31 July 2022 and that the tenant vacated the rental premises on that same day. As such, I find that the landlord is entitled to payment of rent in that amount.

Decision

17. The landlord's claim for rent succeeds in the amount of \$1,587.50.

Issue # 2 - Late Fees (\$75.00)

Relevant Submission

18. The landlord has requested late fees in the full amount of \$75.00 since the tenant has been in arrears since at least 02 June 2022.

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.

20. 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.

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

Issue 3: Security Deposit (\$372.00)

Relevant Submissions

22. The landlord testified that a security deposit of \$637.50 was to have been collected as per the written rental agreement (L#2), however, only \$372.00 was collected. Proof of a \$372.00 security deposit having been paid on the tenant's behalf by AES on 21 October 2020 was provided by the landlord (L# 4).

Analysis

23. 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.

24. The landlords claim for compensation for damages has succeeded in excess of the \$372.00 security deposit collected. As such, I find the landlord is entitled to retain the full amount of this deposit to offset monies owed.

Decision

25. The landlord's application to retain the tenant's security deposit succeeds in the amount of \$372.00.

Issue 5: Hearing Expenses

26. The landlord claimed \$20.00 for the expense of applying for the hearing (L#5).
27. As their claim has been successful, the tenant shall pay this hearing expense.

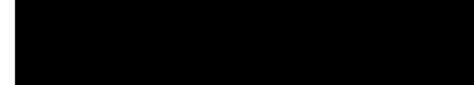
Summary of Decision

28. The landlord is entitled to the following:

- An order to retain the security deposit in the amount of \$372.00.
- A payment of \$1,307.50, determined as follows:
 - a) Rent Owing..... \$1,587.50
 - b) Late Fees.....\$75.00
 - c) Hearing Expenses.....\$20.00
 - d) **Less Security Deposit.....(\$372.00)**
 - e) Total.....\$1,307.50

15 August 2022

Date


Jaclyn Casler
Residential Tenancies Tribunal