

Residential Tenancies Tribunal

Applications: 2022 No. 0753 NL

Decision 22-0753-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 11:17AM on 13 October 2022 via teleconference.
2. The applicant, [REDACTED], as represented by [REDACTED] and 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 by the landlord (L#1) confirming that the tenant was served by registered mail of the claim against her. A review of the tracking number history (L#2) indicates that this package was not picked up, however, subsection 42(6) of the *Residential Tenancies Act* considers items sent by registered mail to have been served "on the fifth day after mailing".
5. The details of the claim were presented as a rental agreement that began 01 February 2022. Monthly rent was set at \$875.00 a month and a security deposit in the amount of \$289.00 was collected on 09 February 2022. No copy of the written rental agreement was provided.
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. The standard of proof, in these proceedings, 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 \$1,345.40;
 - Payment of Late Fees in the amount of \$75.00; and
 - An order for vacant possession.

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* (the *Act*).
9. Also relevant and considered in this case is sections 14, 15 and 19 of the *Act* and rule 29 of *The Rules of the Supreme Court, 1986*.

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. 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.
12. The landlord made a number of amendments to her application:
 - She removed the request for an order of vacant possession because she had been recently notified by the building resident manager, that the tenant had abandoned the rental premises sometime in September 2022.
 - She reduced her claim for rent down to \$375.78.
 - She stated that she wished to retain the full value of the \$289.00 security deposit collected against monies owed.

Issue 1: Payment of Rent (\$375.78)

Relevant Submissions

13. The rental premises is an apartment building located at [REDACTED]. The tenant resides in unit # [REDACTED].
14. The landlord provided a copy of the rental ledger dated 13 October 2022 showing a balance owing of \$375.78, representing rent charged through to 30 September

2022 (L#3). According to these records, the tenant had arrears in the amount of \$620.40 when she was issued a section 19 Termination Notice on 19 August 2022 (L#4). The landlord testified that she issued this notice because the AES rental subsidy for August 2022 was substantially less than previous months.

Analysis

15. I accept the landlord's testimony and evidence that she is owed \$375.78 in arrears as payment for rent through to 30 September 2022.

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16. The landlord's claim for rent succeeds in the amount of \$375.78.

Issue 2: Payment of Late Fees (\$75.00)

Relevant Submissions

17. The landlord requested late fees in the amount of \$75.00. She testified that the tenant last had negative balance on her account on 30 June 2022 when her subsidy for the following month was received prior to rent coming due. Arrears have been accumulating since at least 02 July 2022.

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.

19. 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 at least 2 July 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: Security Deposit

Relevant Submissions

22. The landlord referred to the rent ledger submitted as proof of the \$289.00 security deposit collected on 09 February 2022, and requested to retain this amount against the monies owing from the tenant.

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. Where the landlord's claim for compensation for arrears has succeeded in excess of the security deposit collected, the landlord is entitled to retain the full value of the \$289.00 security deposit collected.

Decision

25. The landlord is entitled to retain the full value of the \$289.00 security deposit collected.

Issue 4: Hearing Expenses
Relevant submissions

26. The landlord claimed \$20.00 for the expense of applying for the hearing.
27. As the landlord's claim has been successful, the tenant shall pay this hearing expense.

Summary Decision

28. The landlord is entitled to the following:
 - To retain the full value of the \$289.00 security deposit collected.
 - A payment of \$181.78, determined as follows:

a) Rent Owing.....	\$375.78
b) Late Fees	\$75.00
c) Hearing Expenses.....	\$20.00
d) LESS Security Deposit.....	\$289.00
e) Total	<u>\$181.78</u>

17 October 2022

Date

Jaclyn Casler
Residential Tenancies Tribunal