

Residential Tenancies Tribunal

Application 2022-0765-NL

Decision 22-0765-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:16 a.m. on 11-October-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 with her application stating that she had served the tenant with notice of the hearing, electronically to her email, on 20-September-2022. The landlord said that they had used this form of communication in the past. 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 her application to reflect that the tenant vacated the property in September, so she therefore is no longer seeking premises vacated. She also increased the amount of rent owed from \$1,670.00 to \$2,590.00; to reflect the current amount owed. She requested to retain the security deposit against the amount of monies owed.

Issues before the Tribunal

6. The landlord is seeking:

- Rent \$2,590.00
- Security deposit applied against monies owed \$600.00
- 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 10: Statutory conditions and Section 14: Security deposit.

Issue 1: Rent \$2,590.00

Landlord's Position

9. The landlord submitted the rental agreement (LL#02) that is held with the tenant. She said that the tenant moved in on 01-October-2020, they initially had a term agreement until 20-September-2021 and then they had a monthly agreement. She said that the tenant pays \$1,200.00 each month which is due on the first day of the month. The tenant also paid a security deposit of \$600.00 in two \$300.00 installments on 20-October-2020 and 03-November-2020; the landlord is still in possession of the deposit.
10. The landlord said that the tenant usually paid the rent in installments when she was paid. Typically, at the start of the tenancy she would do this in advance of the rent coming due. Eventually, the payments fell behind the due date and the tenant fell into arrears. The landlord said she served the tenant with a termination notice for failure to pay rent and that the tenant moved out on or about 24-September-2022.
11. The landlord provided a rent ledger (LL#03) showing the details of the rent arrears. When the tenant moved out in September the landlord calculated a daily rate of rent for the month at \$40.00 a day. Included in the table is our tabulation for the daily rate of \$39.45 a day. The ledger is as follows:

Rent ledger 2022-0765-NL			
Date	Action	Amount	total
29-Sep-20	payment	-300.00	-300.00
1-Oct-20	rent due	1200.00	900.00
1-Oct-20	damage deposit	600.00	1500.00
6-Oct-20	payment	-900.00	600.00
20-Oct-20	payment	-900.00	-300.00
1-Nov-20	rent due	1200.00	900.00

3-Nov-20		payment	-900.00	0.00
17-Nov-20		payment	-600.00	-600.00
1-Dec-20	rent due		1200.00	600.00
1-Dec-20		payment	-600.00	0.00
15-Dec-20		payment	-600.00	-600.00
29-Dec-20		payment	-600.00	-1200.00
1-Jan-21	rent due		1200.00	0.00
12-Jan-21		payment	-600.00	-600.00
26-Jan-21		payment	-600.00	-1200.00
1-Feb-21	rent due		1200.00	0.00
9-Feb-21		payment	-600.00	-600.00
23-Feb-21		payment	-500.00	-1100.00
1-Mar-21	rent due		1200.00	100.00
1-Apr-21	rent due		1200.00	1300.00
2-Apr-21		payment	-300.00	1000.00
29-Apr-21		payment	-450.00	550.00
1-May-21	rent due		1200.00	1750.00
13-May-21		payment	-600.00	1150.00
31-May-22		payment	-450.00	700.00
1-Jun-21	rent due		1200.00	1900.00
25-Jun-21		payment	-800.00	1100.00
1-Jul-21	rent due		1200.00	2300.00
9-Jul-21		payment	-700.00	1600.00
23-Jul-21		payment	-900.00	700.00
1-Aug-21	rent due		1200.00	1900.00
6-Aug-21		payment	-800.00	1100.00
21-Aug-21		payment	-400.00	700.00
1-Sep-21	rent due		1200.00	1900.00
3-Sep-21		payment	-600.00	1300.00
21-Sep-21		payment	-600.00	700.00
1-Oct-21	rent due		1200.00	1900.00
1-Oct-21		payment	-600.00	1300.00
15-Oct-21		payment	-600.00	700.00
29-Oct-22		payment	-600.00	100.00
1-Nov-21	rent due		1200.00	1300.00
26-Nov-21		payment	-1100.00	200.00
1-Dec-21	rent due		1200.00	1400.00
1-Jan-22	rent due		1200.00	2600.00
20-Jan-22		payment	-1800.00	800.00
1-Feb-22	rent due		1200.00	2000.00
1-Mar-22	rent due		1200.00	3200.00
3-Mar-22		payment	-1160.00	2040.00
1-Apr-22	rent due		1200.00	3240.00
16-Apr-22		payment	-400.00	2840.00
26-Apr-22		payment	-1000.00	1840.00
1-May-22	rent due		1200.00	3040.00
11-May-22		payment	-1060.00	1980.00
25-May-22		payment	-600.00	1380.00

1-Jun-22	rent due	1200.00	2580.00
1-Jul-22	rent due	1200.00	3780.00
13-Jul-22	payment	-400.00	3380.00
16-Jul-22	payment	-550.00	2830.00
26-Jul-22	payment	-900.00	1930.00
1-Aug-22	rent due	1200.00	3130.00
9-Aug-22	payment	-700.00	2430.00
25-Aug-22	payment	-800.00	1630.00
1-Sep-22	rent daily rate	946.80	2576.80

Daily rate \$1,200.00 x 12 months = \$14,400.00 a year

\$14,400.00 a year divided by 365 days = \$39.45

\$39.45 a day x 24 days in Sept = \$946.80

12. The landlord is seeking full compensation for rent owed totaling \$2,576.80.

Analysis

13. Non-payment of rent is a violation of the rental agreement (LL#02). I accept the landlord's testimony and evidence that the tenant did not pay rent as indicated in the ledger.
14. The tenant shall pay the landlord the rent owed totaling \$2,576.80.

Decision

15. The landlord's claim for rent succeeds in the amount of \$2,576.80.

Issue 2: Security deposit applied against monies owed \$600.00

Landlord's Position

16. The landlord stated in paragraph 9 that the tenant paid a security deposit of \$600.00 and that she is still in possession of that deposit. She is applying to have the deposit applied to monies owed.

Analysis

17. The landlord's claim for loss has been successful, paragraph 14, and she shall retain the deposit as per Section 14 of the *Residential Tenancies Act, 2018*, see below:

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

18. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$600.00.

Issue 3: Hearing expenses reimbursed \$20.00

19. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#04) and pursuant to policy 12.01, as the claim has been successful, she is entitled to reimbursement of that cost from the tenant.

Summary of Decision


20. The tenant shall pay to the landlord \$1,996.80, as follows:

- Rent..... \$2,576.80
- Hearing expenses 20.00
- Less security deposit (600.00)
 - Total \$1,996.80

The landlord shall retain the \$600.00 security deposit.

October 14, 2022

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office