

Residential Tenancies Tribunal

Applications: 2022 No. 0771 NL

Decision 22-0771-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:16 AM on 19 October 2022 via teleconference.
2. The applicant, [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 by the landlord (L#1) confirming that the tenant was served personally of the claim against him on 16 September 2022.
5. The details of the claim were presented as a month-to-month rental agreement operating since 01 October 2018. Monthly rent was set at \$650.00, pay own utilities, with payments due bi-weekly on the first and the fifteen of every month. A security deposit in the amount of \$325.00 was collected and a copy of the written rental agreement was submitted (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. 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:
 - An order for payment of arrears in the amount of \$1,625.00;
 - An order for payment of late fees in the amount of \$75.00; and
 - An order for payment of damages in the amount of \$285.35.

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 him 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 he has 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 his absence.
13. The landlord amended his claim to clarify that he is also seeking an order to retain the \$325.00 security deposit against monies owing.

Issue 1: Payment of rent \$1,625.00

Relevant Submissions

14. The rental premises is a one bedroom, above ground apartment located at [REDACTED] [REDACTED] The landlord testified that he furnished the apartment and allowed the tenant to take everything (other than appliances) when he vacated. The landlord testified that the tenant vacated the rental premises in response to a section 19 termination notice issued on 02 July 2022 for non-payment of rent.
15. Regarding the exact day that the landlord regained possession of the rental premises, the landlord testified that he confirmed the unit was vacant on 13 July 2022 but that the tenant never returned keys for the premises.
16. The landlord provided a copy of his rental leger (L#4) and testified that the tenant owed \$1,625.00 in rent when he issued the termination notice. The landlord stated that the tenant was often late with rent and provided documentation from his bank confirming all 2022 dates that the tenant paid rent by EMT (L#5).

Analysis

17. I accept the landlord's testimony and evidence that the tenant did not pay all rent as required between January and June 2022. I created the table below to outline how I find that the tenant owed \$975.00 in rent as at 30 June 2022:

	Rent	Paid
22-Jan	\$650.00	\$325.00
22-Feb	\$650.00	\$325.00
22-Mar	\$650.00	\$650.00
22-Apr	\$650.00	\$975.00
22-May	\$650.00	\$650.00
22-Jun	<u>\$650.00</u>	<u>\$0.00</u>
Total	\$3,900.00	\$2,925.00
		= \$975.00

18. Regarding the landlord's claim for rent for July 2022, I find that he is entitled to rent for each day that the tenant retained possession of the rental unit. Because the landlord testified that he issued a termination notice and that he confirmed the rental premises was vacant on 13 July 2022, I find that he is entitled to rent to that day, in the amount of \$277.81, as per the calculations below:

$$\begin{aligned} \$650.00 \times 12 &= \$7,800.00 / 365 = \$21.37 \text{ per day} \\ \$21.37 \times 13 &= \$277.81 \text{ for rent July 1 – July 13 2022} \end{aligned}$$

Decision

19. The landlord's claim for compensation for rent succeeds in the amount of \$1,252.81 (e.g., \$975.00 + \$277.81).

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

Landlord's Position

20. The landlord has assessed late fees in the amount of \$75.00 and testified that the tenant last had a zero dollar balance on his account in December 2021.

Analysis

21. 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.

22. 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.

23. As the tenant has been arrears since at least 2 January 2022, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

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

Issue # 3: Compensation for Damages \$285.35

Relevant Submissions

25. The landlord submitted a series of photos (L#6) and testified that the rental premises appears to have never been cleaned during the years it was occupied by the tenant. He spoke in detail of the amount of mold that was discovered in the bathroom and stated that he threw out the fridge and stove because they could not be cleaned. The landlord testified that he and his wife spent at least 14 hours cleaning the rental premises and that they later discovered that they need to replace the tub surround.

Analysis

26. The applicant in any damage claim is required to provide and speak to the evidence (witness, documentary, or recorded) necessary to establish on the balance of probabilities that:

- That the damage they are claiming compensation, exists;
- That the respondent is responsible for the reported damage through a willful or negligent act; and
- The value to repair or replace the damaged item(s).

27. If and when damaged items pass the validity test of damages based on the balance of probabilities, actual compensation amounts are calculated in accordance with *Residential Tenancies Policy 9-005 Depreciation and Life Expectancy of Property*. According to this policy, higher compensation is awarded for damage of newer items, less compensation is awarded for items considered to have exceeded their serviceable life.

28. Specific to the state of the rental premises, I accept the landlord's testimony and evidence that he and his wife were required to spend at least 14 hours cleaning the rental premises after they regained possession. According to *Residential Tenancies Policy 9-005 Depreciation and Life Expectancy of Property* the maximum hourly rate at which compensation for cleaning can be claimed is \$21.70 an hour. As such, I find that the landlord is entitled to compensation in the amount of \$303.80 (e.g., \$21.70 x 14). Because however, the landlord has claimed compensation in the amount of \$285.35, his claim will succeed in that amount.

Decision

29. The landlord's claim for compensation for damages succeeds in the amount of \$285.35.

Issue 3: Security Deposit

Relevant Submissions

30. Proof of a \$325.00 security deposit was provided on the rental agreement. The landlord testified that he has no written agreement with the tenant on how to dispose of this deposit.

Analysis

31. 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.*

32. The landlord's claim for compensation for rent and damages has succeeded in excess of the \$325.00 security deposit collected. As such, I find that he is entitled to retain the full amount of the security deposit collected against monies owned by the tenant.

Decision

33. The landlord's application to retain the tenant's security deposit succeeds in the amount of \$325.00.

Issue 4: Hearing Expenses

34. The landlord submitted a written claim for hearing expenses (L#7), and requested compensation for the following:

1. \$20.00 application fee.
2. \$60.00 fee from his bank for producing the statement referred to in paragraph 16.
3. $\$7.99 + \text{HST} \times 2 = \18.38 for the purchase of two flash drives so he could provide photographic evidence to the tenant and to this tribunal.
4. \$117.99 for the cost of printer toner to print all related materials.

35. The tribunal recognizes expenses #1-#3 as valid hearing expenses in accordance with Residential Tenancies Policy 12-01. However, #4 is not a valid hearing expense because there are less expensive ways to print hearing related documentation (such as self printing at Staples).

36. The tenant shall pay the landlord's hearing expenses in the amount of \$98.38 (e.g., \$20.00 + \$60.00 + \$18.38) because his claim for compensation has been successful.

Summary of Decision

37. The landlord is entitled to the following:

- To retain the full value of the \$325.00 security deposit collected.
- To payment from the tenant in the amount of \$1,386.54, determined as follows:
 - a) Rent.....\$1,252.81
 - b) Late Fees.....\$75.00
 - c) Compensation for Damages.....\$285.35
 - d) Hearing Expenses.....\$98.38
 - e) LESS Security Deposit.....\$325.00
 - f) Total.....\$1,386.54

20 October 2022

Date

Jaclyn Casler
Residential Tenancies Tribunal