

Residential Tenancies Tribunal

Application 2022-0901-NL

Decision 22-0901-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 2:19 p.m. on 22-November-2022.
2. The applicant, [REDACTED], represented by [REDACTED] and [REDACTED], hereinafter referred to as "landlord1 and landlord2" 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. The tenant is in a nursing home and the line from the nurses' station dropped the call a number of times. The call information was left with the staff, as they said that the tenant has her own cell phone. She did not call in. 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 (LL#01) with their application stating that they had served the tenant with notice of the hearing, by prepaid registered mail. The tracking number ([REDACTED]) shows that the package was mailed on 19-October-2022 and delivered on 21-October-2022. 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 their claim to change rent owed from \$2,374.19 to \$2,605.00. They also requested to add Security deposit applied to monies owed \$205.00 to their claim.

Issues before the Tribunal

6. The landlords are seeking
 - Rent \$2,605.00

- Late fees \$75.00
- Security deposit applied to monies owed \$210.82
- 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 \$2,605.00

Relevant Submissions

9. Landlord1 said that they have a written rental agreement with the tenant. She said that the tenant moved in 01-March-2002 and she moved out on 30-June-2022. She said that when the tenant moved she was paying \$875.00 rent. The rental period is from the first day of each month until the last and that rent is due in full on the 1st day of the month. When the tenant moved in she paid a security deposit of \$205.00. Landlord2 said that when they purchased the building in December of 2010 the security deposit transferred to them in the sale and that they are still in possession of the deposit. He said that they calculated the interest that should be credited to the deposit and the tenant's deposit now has a value of \$210.82.
10. Landlord1 submitted a rent ledger into evidence (LL#02) she said that they gave a rental increase rebate beginning 01-June-2020 for three months. And that the tenant had two insufficient funds charges in April and May of 2022. The rent ledger had a zero balance in May of 2020, the following ledger begins June 2020:

Rent ledger
2022-0901-NL

Date	Action	Amount	total
1-Jun-20	Rent due	845.00	845.00
1-Jun-20	increase credit	-10.00	835.00
9-Jun-20	cheque	-845.00	-10.00
1-Jul-20	Rent due	845.00	835.00
1-Jul-20	increase credit	-10.00	825.00
10-Jul-20	cheque	-845.00	-20.00
1-Aug-20	Rent due	845.00	825.00
1-Aug-20	increase credit	-10.00	815.00
11-Aug-20	cheque	-845.00	-30.00
1-Sep-20	Rent due	845.00	815.00
8-Sep-20	cheque	-845.00	-30.00
1-Oct-20	Rent due	845.00	815.00
6-Oct-20	cheque	-845.00	-30.00
1-Nov-20	Rent due	845.00	815.00
5-Nov-20	cheque	-845.00	-30.00

1-Dec-20	Rent due		845.00	815.00
15-Dec-20		cheque	-845.00	-30.00
1-Jan-21	Rent due		845.00	815.00
8-Jan-21		cheque	-845.00	-30.00
1-Feb-21	Rent due		845.00	815.00
9-Feb-21		cheque	-845.00	-30.00
1-Mar-21	Rent due		845.00	815.00
9-Mar-21		cheque	-845.00	-30.00
1-Apr-21	Rent due		845.00	815.00
13-Apr-21		cheque	-845.00	-30.00
1-May-21	Rent due		845.00	815.00
5-May-21		cheque	-845.00	-30.00
1-Jun-21	Rent due		855.00	825.00
9-Jun-21		cheque	-855.00	-30.00
1-Jul-21	Rent due		855.00	825.00
6-Jul-21		cheque	-855.00	-30.00
1-Aug-21	Rent due		855.00	825.00
1-Sep-21	Rent due		855.00	1680.00
2-Sep-21		cheque	-855.00	825.00
14-Sep-21		cheque	-855.00	-30.00
1-Oct-21	Rent due		855.00	825.00
8-Oct-21		cheque	-855.00	-30.00
1-Nov-21	Rent due		855.00	825.00
8-Nov-21		cheque	-855.00	-30.00
1-Dec-21	Rent due		855.00	825.00
7-Dec-21		cheque	-855.00	-30.00
1-Jan-22	Rent due		855.00	825.00
13-Jan-02		cheque	-855.00	-30.00
1-Feb-22	Rent due		855.00	825.00
9-Feb-22		cheque	-855.00	-30.00
1-Mar-22	Rent due		855.00	825.00
28-Mar-22		cheque	-855.00	-30.00
1-Apr-22	Rent due		855.00	825.00
1-May-22	Rent due		855.00	1680.00
25-May-22		cheque	-855.00	825.00
25-May-22		cheque	-855.00	-30.00
1-Jun-22	Rent due		875.00	845.00
3-Jun-22	NSF cheque		855.00	1700.00
3-Jun-22	NSF charge		25.00	1725.00
3-Jun-22	NSF cheque		855.00	2580.00
3-Jun-22	NSF charge		25.00	2605.00

11. The landlord is seeking full compensation for monies owed.

Analysis

12. Non-payment of rent is a violation of the rental agreement (LL#02). I accept the landlords' testimony and evidence that the tenant did not pay rent totaling \$2,605.00.
13. I accept the charges charged to the tenant for cheques returned in accordance with Section 15 of the Residential Tenancies Act, 2018, as follows:

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.

(2) Where a cheque for the payment of rent is returned to a landlord by a financial institution because of insufficient funds, the landlord may charge the tenant a fee in the same amount as the fee charged to the landlord by the financial institution.

14. The tenant shall pay the landlord the rent owed totaling \$2,605.00.

Decision

15. The landlord's claim for rent succeeds in the amount of \$2,605.00.

Issue 2: Late fees \$75.00

Relevant Submissions

16. The landlord has proven, paragraph 12, that the tenant has been in rental arrears as of 02-April-2022. The tenant didn't pay April rent until 25-May-2022 and then her payments for May and June were returned due to insufficient funds. The landlords are seeking the maximum allowed late fees.

Analysis

17. 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.

18. As the tenant has been in arrears since 02-April-2022, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

19. The landlords' claim for late fees succeeds in the amount of \$75.00.

Issue 3: Security deposit applied to monies owed \$210.82

Relevant Submissions

20. Landlord2 stated in paragraph 9 that the tenant paid a security deposit of \$205.00. He said that they calculated the interest that should be credited to the deposit and the tenant's deposit now has a value of \$210.82, and he said that they are still in possession of the deposit. The landlord is requesting to retain the security deposit against monies owed.

Analysis

21. The landlord's claim for losses has been successful, paragraphs 14 and 18, 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

22. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$210.82.

Issue 4: Hearing expenses reimbursed \$20.00

23. 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

24. The tenant shall pay to the landlord \$2,489.18, as follows:

- Rent \$2,605.00
- Late fees 75.00
- Hearing expenses 20.00
- Less security deposit (210.82)
- Total \$2,489.18

November 28, 2022

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office