

Residential Tenancies Tribunal

Applications: 2022 No. 0960 NL

Decision 22-0960-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:17 AM on 14 December 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord" participated in the hearing, he was supported during the hearing by his daughter, [REDACTED], hereinafter referred to as "the landlord's representative". The applicant's wife, [REDACTED], did not participate in the hearing.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as "tenant1" and "tenant2" did not participate in the hearing.
4. An affidavit of service was provided by the landlord (L#1) confirming that tenant1 was served notice of the claim electronically and proof of service was provided (L#2). A second affidavit of service (L#3) was also provided confirming that tenant2 was served electronically of the claim and proof of service was provided (L#4). The landlord's representative testified that they knew to serve electronically because tenant1 had provided the emails through text to the landlord, and proof of this text exchange was provided (L#5).
5. The details of the claim were presented as a month-to-month agreement with rent paid by-weekly. The tenants took occupancy in mid December 2021 and vacated 11 December 2022. Monthly rent was set at \$850.00, paid bi-weekly and a security deposit in the amount of \$425.00 was collected.
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:
 - Validity of termination notice determined;
 - An order for vacant possession;
 - Payment of rent in the amount of \$1,650.00;
 - Payment of late fees in the amount of \$300.00;
 - An order to retain the full value of \$425.00 security deposit against monies owed.

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 are sections 14, 15 and 19 of the *Act* and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

10. The tenants were not present or represented at the hearing and I was unable to reach them by telephone at either [REDACTED] or [REDACTED]. 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 tenants were 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 updated his application and stated that the tenants vacated on 11 December 2022. Consequently, the request for validity of termination notice and an order of vacant possession were removed from this dispute.

Issue 1: Payment of Rent (\$1,650.00)

Landlord's Position

14. The rental premises is a basement apartment located at [REDACTED] [REDACTED]. The landlord's representative reviewed the rent ledger that details payments received in 2022, and testified that only a single payment of \$200.00

has been received since the ledger was submitted (L#6). The landlord testified that he believes he is currently owed \$3,575.00 in rent as at the day of the hearing.

15. The landlord's representative referred to a section 19 termination notice issued on 28 October 2022 that identified a stated move out date of 08 November 2022 (L# 7). The landlord testified that this notice was served by being placed in the tenants' mailbox on the day it was issued.

Analysis

16. I accept that the tenants owed the landlord rent. Regarding the landlord's specific entitlement to rent, I created the table below to provide more clarity on amounts charged and payments received:

	Charged	Paid
Jan	\$850.00	\$850.00
Feb	\$850.00	\$325.00
March	\$850.00	\$850.00
April	\$850.00	\$425.00
May	\$850.00	\$850.00
June	\$850.00	\$850.00
July	\$850.00	\$1,000.00
Aug	\$850.00	\$850.00
Sept	\$850.00	\$425.00
Oct	\$850.00	\$0.00
Nov	<u>\$850.00</u>	<u>\$200.00</u>
Total	\$9,350.00	\$6,625.00
		Owning
		\$2,725.00

17. As shown in the table above, I accept that the landlord was owed \$2,725.00 as at 30 November 2022. Because the landlord testified that the tenants vacated on 11 December 2022 after being issued a section 19 termination notice, I find that he is entitled to payment of rent in the amount of \$307.45 for December 2022. This makes for a total amount of rent owing of \$3,032.45 as shown in the calculations below:

$$\$850.00 \times 12 = \$10,200.00 / 365 = \$27.95$$

$$\$27.95 \times 11 = \$307.45 \text{ for rent for December 1 thru 11 2022}$$

$$\$307.45 + \$2,725.00 = \$3,032.45 \text{ for total rent owing.}$$

Decision

18. The landlord's claim for rent succeeds in the amount of 3,032.45.

Issue 2: Payment of Late Fees (\$300.00)

Relevant Submissions

19. The landlord testified that the tenants have been in arrears since at least February 2022. He assessed late fees in the amount of \$75.00 on four occasions to represent four partial monthly rent payments received since that time.

Analysis

20. 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.

21. 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.

22. As shown in the table provided in paragraph 16, the tenants been in arrears since 02 February 2022. Consequently, I find that the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 3: Security Deposit \$425.00

Relevant Submissions

24. The landlord testified that he received a security deposit in the amount of \$425.00.

Analysis

25. 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.*

26. As the amount owing to the landlord for rent is in excess of the security deposit collected, I find that the landlord is entitled to retain the full amount of the \$425.00 security deposit.

Decision

27. The landlord shall retain the full value of the \$425.00 security deposit.

Issue 4: Hearing Expenses

28. The landlord claimed the \$20.00 expense of applying for this hearing. As his claim has been successful, the tenant shall pay this expense.

Summary of Decision

29. The landlord is entitled to the following:

- To retain the full value of the \$425.00 security deposit.
- An order for payment from the tenant in the amount of \$2,702.45 determined as follows:
 - a) Rent..... \$3,032.45
 - b) Late Fees..... \$75.00
 - c) Hearing Expenses \$20.00
 - d) LESS Security Deposit.....(\$425.00)
 - e) Total..... \$2,702.45

20 December 2022

Date

Jaclyn Casler
Residential Tenancies Tribunal