

Residential Tenancies Tribunal

Applications: 2023 No. 0096 NL

Decision 23-0096-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 11:21 PM on 16 March 2023 via teleconference.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as "landlord1" and "landlord2", participated in the hearing. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as "tenant1" and "tenant2", did not participate and were not represented at the hearing.
3. Two affidavits of service were provided confirming that Landlord1 served the tenants by Xpressmail and by email (L#1). As noted on the affidavits, service was provided by Xpressmail on 27 February 2023 and proof of mailing slips were provided (L#2) along with a dated receipt (L#3). A review of the associated tracking numbers confirms that both packages were picked up. The affidavits also note that landlord1 served notice to the tenant's individual emails as provided on their original rental agreement (L#4), and proof of service sent by email on 04 March 2023 was provided (L#5). Consequently, I find that the landlords properly served the tenants with notice of their claim.
4. The details of the claim were presented as an originally fixed term rental agreement that started in fall of 2020. Monthly rent was set at \$1,100.00, due on the 11th of each month, and a security deposit in the amount of \$600.00 was collected. Copies of the various written rental agreements was provided (L#0).
5. 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

6. The landlord is seeking the following:
 - An order for rent to be paid in the amount of \$2,000.00;
 - An order for late fees to be paid in the amount of \$150.00;
 - An order for compensation for inconvenience in the amount of \$1,283.04; and
 - An order for payment of Other in the amount of \$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* (the *Act*).
8. Also relevant and considered in this case is section 14, 15, and 19 of the *Act* and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

9. The tenants were present or represented at the hearing and I was unable to reach them by telephone at [REDACTED] or [REDACTED]. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*.
10. 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.
11. 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.
12. Landlord1 stated that he is still holding the \$600.00 security deposit from the tenants. Consequently, disposition of the deposit will be considered in this report. It was also determined that the claim for payment of Other, is a claim for hearing expenses.

Issue 1: Payment of Rent (\$2,000.00)

Relevant Submissions

13. The rental premises is a single family dwelling located at [REDACTED] [REDACTED]. Landlord1 testified that he issued a three month termination notice in early October 2022 for the tenancy to terminate on 11 January 2023. Upon

doing so, landlord1 testified that monthly rent in the amount of \$1,100.00 was not received for either November 2022 or December 2022. Landlord1 testified that he received \$200.00 from the tenants in December 2022 and that he is not seeking any payment of rent for January 2023 since the tenants were understood to have vacated when required. Landlord1 referred to a rent ledger submitted (L#6).

Analysis

14. The landlord is responsible for establishing the monthly rate of rent and the tenant's payment history. I accept landlord1's testimony and evidence and I find that the tenants owed \$2,000.00 in rent (e.g., \$1,100.00 + \$1,100.00 - \$200.00).

Decision

15. The landlord's claim for rent succeeds in the amount of \$2,000.00.

Issue 2: Payment of Late Fees (\$150.00)

Relevant Submissions

16. The landlords assessed late fees in the amount of \$150.00 because rent was overdue for November 2022 and December 2022. He was informed that late fees can only be charged to a maximum of \$75.00 for a single period of arrears.

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.

18. 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.

19. Because there have been arrears on the tenants' account since at least 12 November 2022, I find that the landlord is entitled to payment of the maximum fee of \$75.00 as set by the minister.

Decision

20. The landlords' claim for late fees succeed in the amount of \$75.00.

Issue 3: Compensation for Inconvenience (\$1,283.04)

Relevant Submissions

21. Landlord1 submitted a written inconvenience ledger (L#7) summarizing his claim for compensation for three nights in a hotel as well as the rental of a dumpster that was retained for the purpose of cleaning the property of the rental premises. A copy of a receipt in the amount of \$808.68 for 17 January 2023 for the dumpster was submitted along with a small collection of photos (L#9). Landlord1 confirmed that there was no information provided on the receipt for the dumpster to confirm it was used at the rental premises, and he also confirmed that not all photos/videos were submitted of debris left at the premises.
22. The landlords attempted to claim \$474.36 for three nights in a hotel while they spent time cleaning the rental premises (L#10). However, they were informed during the hearing that this tribunal does not consider landlord costs of living in a separate community from their rental, to be recoverable from your tenants.

Analysis

23. I accept landlord1's testimony that he incurred costs for a dumpster. However, since I am unable to independently verify that this dumpster was indeed used at the rental premises, and I am also unable to independently verify that the use of a dumpster was justified at the premises (e.g., by reviewing documentation of excessive debris), I find that the landlords failed to establish on the balance of probabilities that there are entitled to compensation for any inconvenience claimed.

Decision

24. The landlords' claim for compensation for inconvenience does not succeed in any amount.

Issue 4: Security Deposit \$600.00

Relevant Submissions

25. Landlord1 testified that a \$600.00 damage deposit was collected.

Analysis

26. 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.*

27. As the amount owing to the landlord for rent and late fees is in excess of the security deposit collected, I find that the landlord is entitled to retain the full amount of the \$600.00 security deposit.

Decision

28. The landlords shall retain the full value of the \$600.00 security deposit.

Issue 5: Hearing Expenses

29. The landlords claimed the \$20.00 expense of applying for this hearing. As their claim has been partially successful, the tenants shall pay this expense.

Summary of Decision

30. The landlords' claim for compensation for inconvenience does not succeed in any amount.
31. The landlords are entitled to the following:
 - To retain the full value of the \$600.00 security deposit.
 - An order for payment from the tenant in the amount of \$1,495.00 determined as follows:
 - a) Rent.....\$2,000.00
 - b) Late Fees.....\$75.00
 - c) Hearing Expenses\$20.00
 - d) LESS Security Deposit.....(\$600.00)
 - e) Total.....\$1,495.00

21 March 2023

Date


Jaclyn Casler
Residential Tenancies Tribunal