

Residential Tenancies Tribunal

Application 2023-0616-NL

Decision 23-0616-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:49 p.m. on 13-September-2023.
2. The applicant, [REDACTED], represented by [REDACTED], hereinafter referred to as "the landlord" attended by teleconference.
3. The respondents, [REDACTED] (respondent 1) and [REDACTED] (respondent 2), hereinafter referred to the "tenants" attended by teleconference. [REDACTED] (respondent 3), also tenant did not attend.

Preliminary Matters

4. Respondent 3 was not present but was represented by the other 2 respondents. 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 hearing 10 clear days prior to the hearing date and, where the respondents fail 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. The landlord submitted 3 separate affidavits with his application stating that he had served the tenants with the notice of hearing electronically by email; respondent 1 [REDACTED] on 18-August-2023, respondent 2 [REDACTED] and respondent 3 [REDACTED] on 25-August-2023 (LL#1). Respondent 1 and respondent 2 confirmed that they received the document on that day and they also confirmed that respondent 3 had received his document as well. In accordance with the *Residential Tenancies Act, 2018*. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in respondent 3's absence.
5. There was a written term rental agreement which commenced on 31-May-2022 (LL#2). The tenants vacated the unit on 31-May-2023. Rent was \$1095.00 per month due on the last day of each month. A security deposit of \$800.00 was paid on 31-May-2022 and according to the landlord has been used to cover cleaning expenses.

6. The landlord amended the application to omit vacant possession as the tenants have vacated the unit and to increase outstanding rent from \$2485.00 as per the application to \$3580.00 to include rent for the month of June 2023.
7. In accordance with Section 14 of the Act, the disposition of the security deposit will be addressed as the tenants have vacated.

Issues before the Tribunal

8. The landlord is seeking:
 - a. Rent paid \$3580.00
 - b. Late fees \$75.00
 - c. Security deposit applied against monies owed \$800.00

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
10. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 19: Notice where failure to pay rent and Section 14: Security deposit. Also relevant is Section 12-1 of the *Residential Tenancies Policy Manual*; Recovery of fees.

Issue # 1: Rent Paid \$3580.00

Relevant Submissions

11. The landlord testified that rent is outstanding in the amount of \$3580.00 and submitted a rental ledger to support his claim (LL#3). See ledger below:

Rent Ledger

Landlord : [REDACTED] Start Date of Tenancy: 06.01.2022

Tenant(s) : [REDACTED] Security Deposit Paid: \$ 800.00

[REDACTED] Date Security Deposit Paid: 05.27.2022

Rental Unit: [REDACTED]

| Date | Transaction Description | Amount Due | Amount Paid | Balance |
|------------|---------------------------|------------|-------------|-------------|
| 05.27.2022 | Damage deposit | \$ 800 | \$ 800 | \$ - |
| 05.31.2022 | 1st months rent.June 2022 | \$ 1,095 | \$ 1,095 | \$ - |
| 07.02.2022 | July Rent | \$ 1,095 | \$ 1,095 | \$ - |
| 08.25.2022 | August Rent | \$ 1,095 | \$ 500 | \$ 595.00 |
| 09.10.2022 | September Rent | \$ 1,095 | \$ 500 | \$ 1,190.00 |
| 10.06.2022 | October Rent | \$ 1,095 | \$ 666 | \$ 1,619.00 |
| 10.07.2022 | Payment | | \$ 333 | \$ 1,286.00 |
| 10.21.2022 | Payment | | \$ 900 | \$ 386.00 |
| 10.21.2022 | Payment | | \$ 86 | \$ 300.00 |
| 10.31.2022 | November Rent | \$ 1,095 | | \$ 1,395.00 |

| | | | | |
|------------|---------------|----------|--------|-------------|
| 11.02.2022 | Payment | | \$ 730 | \$ 665.00 |
| 11.30.2022 | December Rent | \$ 1,095 | | \$ 1,760.00 |
| 12.14.2022 | Payment | | \$ 365 | \$ 1,395.00 |
| 12.30.2022 | Payment | | \$ 730 | \$ 665.00 |
| 12.31.2022 | January Rent | \$ 1,095 | | \$ 1,760.00 |
| 01.09.2023 | Payment | | \$ 365 | \$ 1,395.00 |
| 01.13.2023 | Payment | | \$ 730 | \$ 665.00 |
| 01.18.2023 | Payment | | \$ 365 | \$ 300.00 |
| 01.31.2023 | February Rent | \$ 1,095 | | \$ 1,395.00 |
| 02.02.2023 | Payment | | \$ 730 | \$ 665.00 |
| 02.09.2023 | Payment | | \$ 365 | \$ 300.00 |
| 02.28.2023 | March Rent | \$ 1,095 | | \$ 1,395.00 |
| 03.28.2023 | April Rent | \$ 1,095 | | \$ 2,490.00 |
| 04.07.2023 | Payment | | \$ 100 | \$ 2,390.00 |
| 04.09.2023 | Payment | | \$ 100 | \$ 2,290.00 |
| 04.14.2023 | Payment | | \$ 400 | \$ 1,890.00 |
| 04.30.2023 | May Rent | \$ 1,095 | | \$ 2,985.00 |
| 05.01.2023 | Payment | | \$ 500 | \$ 2,485.00 |

Landlord's Position

12. The landlord testified that rent has not been paid in full since August 2022 and there is currently an outstanding balance of \$3285.00 which includes rent for the month of June 2023. The landlord stated that he gave a termination notice to vacate on 30-April-2023 but later agreed to extend their occupancy and they vacated without notice.

Tenant's Position

13. Respondent 1 and respondent 2 disputed the rental ledger and testified that the rental balance as of 27-May-2023 was \$1400.00 at which time they received a text message from the landlord stating the same and asking for additional payment (TT#1). Respondent 1 testified that an additional \$250.00 was paid on 28-May-2023, leaving a balance of \$1150.00. The tenant's stated that they should not be responsible for rent for the month of June as they were not residing at the premises and the landlord had given them a termination notice to vacate.

Analysis

14. Section 19 of the *Residential Tenancies Act, 2018* states:

- a. **Notice where failure to pay rent**
- b. **19. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),**
 - i. **(b) where the residential premises is**
 - (i) **rented from month to month,**
 - (ii) **rented for a fixed term, or**
 - (iii) **a site for a mobile home, and**
 - c. **the amount of rent payable by a tenant is overdue for 5 days or more, the landlord may give the tenant notice that the rental agreement is terminated and**

that the tenant is required to vacate the residential premises on a specified date not less than 10 days after the notice is served on the tenant.

i. (4) In addition to the requirements under section 34, a notice under this section shall

- (a) be signed by the landlord;*
- (b) state the date on which the rental agreement terminates and the tenant is required to vacate the residential premises; and*
- (c) be served in accordance with section 35*

15. Non-payment of rent is a violation of the rental agreement. The landlord testified that there were rental arrears in the amount of \$2485.00 when he made application and his amended ledger now has rent outstanding in the amount of \$3285.00 once rent for June was included. Once the tenants stated that they can prove that the balance was \$1400.00 on 27-May and a further payment of \$250.00 was made on 28-May, the landlord rescinded his claim for \$3285.00 and agreed that \$1150.00 was the correct balance when the tenants vacated on 31-May-2023.
16. The landlord is seeking additional rent for the month of June after the tenant's vacated in the amount of \$800.00. I find that the tenants are not responsible for rent for the month of June as the landlord gave a termination notice on 18-April-2023 under Section 19 of the *Act* to vacate by 30-April-2023 (LL#4). Respondent 1 testified that the landlord agreed that they could stay an extra month and as such, the tenants are not responsible for rent for the month of June.
17. I find the tenants are responsible for outstanding rent in the amount of \$1150.00 for the period of 31-July-2022 to 31-May-2023.

Decision

18. The landlord's claim for rent paid succeeds in the amount of \$1150.00.

Issue # 2: Late Fees \$75.00

19. The landlord is seeking late fees to be paid in the amount of \$75.00.

Landlord's Position

20. The landlord stated that rent was continuously late and the landlord feels that the tenants should pay the maximum late fees allowable.

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.

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. *Residential Tenancies Policy 12-1; Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF states;*

Late Payment Fee:

a. *A tenant is responsible to pay the landlord the full rent on the day the rent is due. If the rent is not paid on time, the landlord may charge the tenant a late payment fee of \$5.00 for the first day the rent is in arrears and \$2.00 for each additional day that the rent remains unpaid in any consecutive number of rental periods to a maximum of \$75.00.*

23. The landlord's rental ledger shows that the tenants have been in arrears since August 2022. I find that the maximum allowable late fee of \$75.00 is a legitimate charge based on the payment fee as stated above.

24. I find that the landlord is entitled to the maximum allowable late payment fee of \$75.00 as set by the minister.

Decision

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

Issue # 3: Security Deposit applied against monies owed \$800.00

Landlords Position

26. The landlord testified that he used the security deposit of \$800.00 to clean the unit once the tenants vacated and he does not want the security deposit applied against monies owed.

Tenant's Position

27. The tenants stated that they did not agree that the landlord could retain the security deposit and they stated that the unit did not need cleaning. The tenant's would like to have the security deposit applied against the outstanding rent.

Analysis

28. The landlord cannot retain the security deposit to use as he wishes. The tenant's did not agree that he could use the monies to pay for cleaning and the landlord confirmed that he did not make an application to the *Residential Tenancies Board* to retain the security deposit. In accordance with Section 14 of the *Residential Tenancies Act, 2018*, I find that the security deposit will be applied against monies owed.

29. The landlord's claim for losses has been successful as per paragraph 18, and he shall retain the security 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

30. The security deposit of \$800.00 shall be applied against monies owed.

Issue # 4: Hearing Expenses \$20.00

31. The landlord paid an application fee of \$20.00 to the Landlord Tenancies Board and provided a copy of the receipt (LL#4).

32. As the landlord's claim has been successful, the tenants shall pay the \$20.00.

Decision

33. The landlord's claim for hearing expenses succeeds in the amount of \$20.00.

Summary of Decision

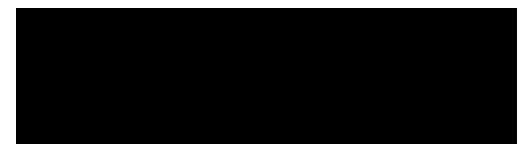
34. The tenant's shall pay the landlord \$370.00 as follows:

| | |
|------------------------------------|--------------------------|
| Rent | \$1150.00 |
| Hearing expenses..... | 20.00 |
| Less Security deposit | <u>(\$800.00)</u> |

Total..... **\$370.00**

September 20, 2023

Date



Pamela Pennell
Residential Tenancies Office