

Residential Tenancies Tribunal

Application 2023-0693-NL

Decision 23-0693-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:55 p.m. on 28-August-2023.
2. The applicant, [REDACTED], represented by [REDACTED], hereinafter referred to as “the landlord” 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. 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 with their application stating that they had served the tenant with the notice of hearing electronically by email; [REDACTED] on 8-August-2023 (LL#1). The landlord showed proof of email address and proof of sent email (LL#2). In accordance with the *Residential Tenancies Act, 2018* this is good service. 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 property is a 2 apartment unit. The landlord stated that there was a written fixed rental agreement which commenced on 1-September-2022 (LL#3). The tenant was removed from the unit on 11-August-2023. Rent was \$1,250.00 per month due on the first day of each month. The tenant agreed to pay 60% of the oil bills as the property only had 1 oil tank for both units. A security deposit of \$937.50 was paid on 5-August-2022 and is still in the company's possession.

6. The landlord amended the application to extract all oil bills and payments from the rental ledger and to increase the outstanding balance to \$2,285.00 which includes rent of \$1,250.00 for the month of August and NSF fee of \$50.00 for August.

Issues before the Tribunal

7. The landlord is seeking:
- Rent paid, late fees and NSF fees \$2,285.00
 - Hearing expenses \$20.00
 - Security Deposit applied against monies owed \$937.50

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*.
9. 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, Section 14: Security Deposit and Section 15: Late fees.

Issue # 1: Rent Paid, Late Fees and NSF Fees \$2285.00

Relevant Submissions

10. The landlord testified that rent combined with late fees and NSF fees is outstanding in the amount of \$2,285.00 which includes rent in the amount of \$2,010.00, late fees of \$75.00 and NSF fees of \$200.00. The landlord submitted a rental ledger in support of their claim (LL#4) see below:

Rent Ledger

Landlord Name: [REDACTED]

Start Date of Tenancy: August 15th, 2022

Tenant Name: [REDACTED]

Security Deposit Paid: \$937.50

Rental Unit Address: [REDACTED]

Date Security Deposit Paid: August 5th, 2022

Date	Description of Charges	Amount Due	Amount Paid	Balance
January 19 th , 2023	Payment via EMT	\$0.00	\$775.00	-\$279.28
February 1 st , 2023	February Rent	\$1,250.00	\$0.00	\$970.72
February 1 st , 2023	Payment via Direct Withdrawal	\$0.00	\$625.00	\$345.72
February 6 th , 2023	Oil Bill Charged	\$593.77	\$0.00	\$939.49
February 15 th , 2023	Payment via EMT	\$0.00	\$350.00	\$589.49
February 28 th , 2023	Late Fees for February	\$59.00	\$0.00	\$648.49
March 1 st , 2023	March Rent	\$1,250.00	\$0.00	\$1,898.49
March 1 st , 2023	Payment via Direct Withdrawal	\$0.00	\$625.00	\$1,273.49
March 9 th , 2023	Payment via EMT	\$0.00	\$500.00	\$773.49
March 10 th , 2023	Oil Bill Charged	\$469.28	\$0.00	\$1,242.77
March 15 th , 2023	Payment via EMT	\$0.00	\$1,000.00	\$242.77
March 31 st , 2023	Late Fees for March	\$16.00	\$0.00	\$258.77
April 1 st , 2023	April Rent	\$1,250.00	\$0.00	\$1,508.77
April 1 st , 2023	Payment via Direct Withdrawal	\$0.00	\$625.00	\$883.77
April 4 th , 2023	Direct Withdrawal Payment Bounced	\$625.00	\$0.00	\$1,508.77
April 4 th , 2023	NSF Fee Charged for Bounced Payment	\$50.00	\$0.00	\$1,558.77
April 13 th , 2023	Payment via EMT	\$0.00	\$680.00	\$878.77
April 14 th , 2023	Payment via EMT	\$0.00	\$580.00	\$298.77

May 1 st , 2023	May Rent	\$1,250.00	\$0.00	\$1,548.77
May 1 st , 2023	Payment via Direct Withdrawal	\$0.00	\$625.00	\$923.77
May 2 nd , 2023	Oil Bill Charged	\$548.97	\$0.00	\$1,472.74
May 4 th , 2023	Direct Withdrawal Payment Bounced	\$625.00	\$0.00	\$2,097.74
May 4 th , 2023	NSF Fee Charged for Bounced Payment	\$50.00	\$0.00	\$2,147.74
May 11 th , 2023	Payment via EMT	\$0.00	\$680.00	\$1,467.74
May 20 th , 2023	Payment via EMT	\$0.00	\$1,082.74	\$385.00
June 1 st , 2023	June Rent	\$1,250.00	\$0.00	\$1,635.00
June 1 st , 2023	Payment via Direct Withdrawal	\$0.00	\$625.00	\$1,010.00
June 5 th , 2023	Direct Withdrawal Payment Bounced	\$625.00	\$0.00	\$1,635.00
June 5 th , 2023	NSF Fee Charged for Bounced Payment	\$50.00	\$0.00	\$1,685.00
June 28 th , 2023	Payment via EMT	\$0.00	\$625.00	\$1,060.00
July 1 st , 2023	July Rent	\$1,250.00	\$0.00	\$2,310.00
July 4 th , 2023	Payment via Direct Withdrawal	\$0.00	\$625.00	\$1,685.00
July 6 th , 2023	Payment via EMT	\$0.00	\$200.00	\$1,485.00
July 20 th , 2023	Payment via EMT	\$0.00	\$500.00	\$985.00

Landlord's Position

11. The landlord stated that rent combined with the late fees and NSF fees are outstanding in the amount of \$2,285.00. The landlord testified that the rental ledger submitted has the cost of oil charged and payments for oil included, however they are not seeking any monies for oil. In fact, the oil bills are paid in full and the balance on the ledger relates to the rent, late fees and NSF fees only. The landlord stated that when rent of \$1,250.00 for August and the NSF fee of \$50.00 for August is added to the balance of \$985.00, the total outstanding amount equates to \$2,285.00.
12. The landlord testified that the tenant was removed from the premises on 11-August-2023 by the Sherriff and they want outstanding rent and fees paid in full.

Analysis

13. Non-payment of rent is a violation of the rental agreement. The landlord testified that rent is continuously in arrears and the last 4 payments have been reversed from the bank due to non-sufficient funds.
14. The rent ledger shows that when oil costs were extracted from the ledger and rent for August and the NSF fee for August were added, the outstanding amount that the landlord is seeking equates to \$2,285.00
15. 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

16. The rental ledger submitted has been amended to extract all items that are not either rent, late fees or NSF fees. The late fees have been adjusted according to Section 15 stated above however, the amount of \$75.00 remains the same. The amended rental ledger shows a daily rate of rent for August as the tenant was removed from the premises on 11-August-2023 (see below). I find that the tenant is responsible for outstanding rent combined with late fees and NSF fees in the amount of \$1,499.47.

Amended Rent Ledger 2023-0693-NL			
Date	Action	Amount	Total
January 19, 2023	Credit		-\$279.28
February 1, 2023	Rent Due	\$1,250.00	\$970.72
February 1, 2023	Payment	-\$625.00	\$345.72
February 15, 2023	Payment	-\$350.00	-\$4.28
February 28, 2023	Late Fees (February 2-14)	\$29.00	\$24.72
March 1, 2023	Rent Due	\$1,250.00	\$1,274.72
March 1, 2023	Payment	-\$625.00	\$649.72
March 15, 2023	Payment	-\$876.86	-\$227.14
March 31, 2023	Late Fees (March 2-14)	\$29.00	-\$198.14
April 1, 2023	Rent Due	\$1,250.00	\$1,051.86
April 1, 2023	Payment	-\$625.00	\$426.86
April 4, 2023	Reversed Payment	\$625.00	\$1,051.86
April 4, 2023	NSF Fee	\$50.00	\$1,101.86
April 13, 2023	Payment	-\$680.00	\$421.86
April 14, 2023	Payment	-\$333.49	\$88.37
April 30, 2023	Late fees (April 2-30)	\$17.00	\$105.37
May 1, 2023	Rent Due	\$1,250.00	\$1,338.37
May 1, 2023	Payment	-\$625.00	\$713.37
May 4, 2023	Reversed Payment	\$625.00	\$1,338.37
May 4, 2023	NSF Fee	\$50.00	\$1,388.37
May 11, 2023	Payment	-\$680.00	\$708.37
May 20, 2023	Payment	-\$632.74	\$75.63
June 1, 2023	Rent Due	\$1,250.00	\$1,325.63
June 1, 2023	Payment	-\$625.00	\$700.63
June 5, 2023	Reversed Payment	\$625.00	\$1,325.63
June 5, 2023	NSF Fee	\$50.00	\$1,375.63
June 28, 2023	Payment	-\$303.26	\$1,072.37
July 1, 2023	Rent Due	\$1,250.00	\$2,322.37
July 4, 2023	Payment	-\$625.00	\$1,697.37
July 6, 2023	Payment	-\$200.00	\$1,497.37
July 20, 2023	Payment	-\$500.00	\$997.37
August 1-11, 2023	Rent Due	\$452.10	\$1,449.47
August 1, 2023	Payment	-\$625.00	\$824.47
August 3, 2023	Reversed Payment	\$625.00	\$1,449.47
August 3, 2023	NSF Fee	\$50.00	\$1,499.47

Daily Rate: $\$1,250 \times 12 = \$15,000.00$
 $\$15,000.00 / 365 = \41.10 a day

Analysis

17. I find the tenant shall pay the landlord \$1,499.47 in outstanding rent, late fees and NSF fees for the period of 1-February to 11-August-2023.

Decision

18. The landlord's claim for rental arrears, late fees and NSF fees succeeds in the amount of \$1,499.47.

Issue # 2: Security Deposit applied against Monies Owed \$937.50

Analysis

19. The landlord's claim for rent and fees has been successful as per paragraph 18, thus the security deposit shall be applied against monies owed.

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

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

21. The landlord's claim to apply the security deposit against monies owed succeeds.

Issue # 3: Hearing Expenses - \$20.00

22. The landlord paid an application fee of \$20.00 (LL#5).

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

Decision

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

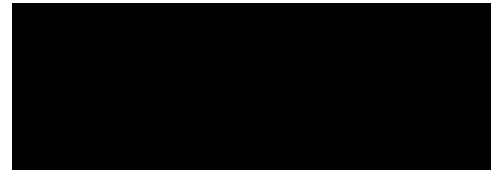
Summary of Decision

25. The tenant shall:

Pay the landlord \$581.97 as follows:

Rent, late fees & NSF fee	\$1499.47
Hearing expenses	20.00
Less: Security deposit	<u>(\$937.50)</u>
Total..	<u>\$581.97</u>

September 15, 2023
Date



Pamela Pennell
Residential Tenancies Office