

Residential Tenancies Tribunal

Application 2023-0699-NL

Decision 23-0699-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:14 a.m. on 17-October-2023.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” did not attend. The applicant’s representative, [REDACTED] attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to the “tenant” did not attend.

Preliminary Matters

4. The tenant was not present or represented at the hearing and I was unable to reach him 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 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 he has been properly served. The landlord submitted an affidavit with his application stating that he had served the tenant with the notice of hearing by leaving it on his door at the residential premises on 11-August-2023 (LL#1). The applicant also submitted a copy of approval of substituted service dated 11-August-2023 (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 the respondent’s absence.
5. There is a written month to month rental agreement which commenced on 27-February-2023. The tenant was forced to vacate the unit on 18-August-2023 as a result of a house fire which according to the applicant’s representative destroyed the unit. Rent was \$1000.00 per month due on the first of each month. A security deposit of \$500.00 was paid on 16-February-2023 and is still in the landlord’s possession.
6. The landlord amended the application to omit vacant possession as the tenant had to vacate the unit as a result of a house fire and to include hearing expenses.

7. In accordance with Section 14 of the *Act*, the disposition of the security deposit will be addressed as the tenant has vacated.

Issues before the Tribunal

8. The landlord is seeking:

- Rent paid \$2000.00
- Late fees \$75.00
- Hearing expenses \$20.00
- Security deposit applied against monies owed \$500.00

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 \$2000.00

Relevant Submissions

11. The landlord testified that rent is outstanding in the amount of \$2000.00 and submitted a rental ledger to support his claim (LL#3). See ledger below:

Rental Ledger 2023-0699-NL			
Date	Action	Amount	Total
June 30, 2023	Balance	\$0.00	\$0.00
July 1, 2023	rent due	\$1,000.00	\$1,000.00
August 1, 2023	rent due	\$1,000.00	\$2,000.00

Landlord's Position

12. The landlord testified that rent has not been paid in full since 30-June and there is currently an outstanding balance of \$2000.00 which includes rent for the months of July and August 2023. The landlord stated that he gave a termination notice to vacate on 7-August-2023 but the tenant only left because of a house fire which forced him out.

Analysis

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

- Notice where failure to pay rent**
- 19. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),**
 - (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

14. Non-payment of rent is a violation of the rental agreement. The landlord testified that there is outstanding rent in the amount of \$2000.00 for the months of July and August. Rent is required to be paid by the tenant for the use and occupation of the rented premises. The landlord gave a termination notice to vacate on 7-August-2023 and as such, the tenant is responsible for the payment of rent up to the date he vacated.

15. The rental ledger is amended to show a daily rate for August (see below). I find that the tenant is responsible for outstanding rent from 1-July to 18-August in the amount of \$1591.84.

Amended Rental Ledger 2023-0699-NL			
Date	Action	Amount	Total
June 30, 2023	Balance	\$0.00	\$0.00
July 1, 2023	rent due	\$1,000.00	\$1,000.00
August 1-18, 2023	rent due	\$591.84	\$1,591.84

Daily rate: \$1000 x 12 mths = \$12000

$$\$12000 \setminus 365 \text{ days} = \$32.88 \text{ per day}$$

16. I find the tenant is responsible for outstanding rent in the amount of \$1591.84 for the period of 1-July-2023 to 18-August-2023.

Decision

17. The landlord's claim for rent paid succeeds in the amount of \$1591.84.

Issue # 2: Late Fees \$75.00

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

Landlord's Position

19. The landlord stated that rent was not paid in July or August and the landlord feels that the tenant should pay the maximum late fees allowable.

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.

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*

21. *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.*
- 22. The landlord's rental ledger shows that the tenant has been in arrears since 30-June-2023. I find that the maximum allowable late fee of \$75.00 is a legitimate charge based on the payment fee as stated above.
- 23. I find that the landlord is entitled to the maximum allowable late payment fee of \$75.00 as set by the minister.

Decision

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

Issue # 3: Security Deposit applied against monies owed \$500.00

Analysis

25. 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.*

26. The landlord's claim for losses has been successful as per paragraph 17, and as such the security deposit shall be applied against monies owed.

Decision

27. The security deposit of \$500.00 shall be applied against monies owed.

Issue # 4: Hearing Expenses \$20.00

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

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

Decision

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

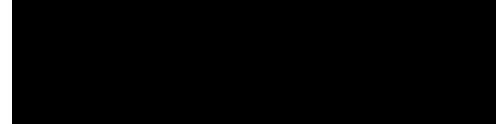
Summary of Decision

31. The tenant shall pay the landlord \$1186.84 as follows:

Rent	\$1591.84
Late fees	75.00
Hearing expenses.....	20.00
Less Security deposit	<u>\$500.00</u>
 Total.....	 <u>\$1186.84</u>

October 31, 2023

Date



Pamela Pennell
Residential Tenancies Office