

Residential Tenancies Tribunal

Application 2023-No.0740 -NL

Decision 23-0740-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 1:48 p.m. on 11-September-2023.
2. The applicant, [REDACTED], represented by [REDACTED] and [REDACTED], hereinafter referred to as "landlord1 and landlord2" attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as "the tenant" attended by teleconference.

Preliminary Matters

4. The landlord submitted an affidavit (LL#01) stating that she served the tenant with notification of today's hearing in person on 24-August-2023. The tenant confirms receipt of notification as stated.
5. The landlord amended their application to decrease rent from \$4,075.00 to \$3,575.00 to reflect the current amount of rent due. The application was also amended to include \$75.00 late fees and to remove vacant possession as the landlord has regained possession of the property from the tenant.

Issues before the Tribunal

6. The landlord is seeking:
 - Rent \$3,575.00
 - Late fees \$75.00
 - Security deposit applied against monies owed \$700.00
 - Hearing Expenses \$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*.
8. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 14: Security deposit, Section 15: Fee for failure to pay rent, and Section 19: Notice where failure to pay rent.

Issue 1: Rent \$3,575.00

Landlord's Position

9. The landlords submitted a rental agreement (LL#02) with the application. They entered a written monthly agreement with the tenant beginning 01-July-2017. The tenant paid \$1,400.00 a month. The rental period is from the 1st day of the month until the last day; rent is due the 1st day of each month. The landlord said that the tenant paid a security deposit of \$700.00 on 01-July-2017. She reports that the tenant moved out on 15-August-2023.
10. The landlord submitted a rent ledger (LL#03), as follows:

Rent ledger 2023-0740-NL				
Date		Action	Amount	total
1-Jun-23	rent due		1400.00	1400.00
20-Jun-23		payment	-140.00	1260.00
1-Jul-23	rent due		1400.00	2660.00
1-Aug-23	rent due		1400.00	4060.00
13-Aug-23		payment	-500.00	3560.00

11. Landlord1 stated that they only submitted the rent ledger beginning 01-June-2023 because the rent due prior to this time has been paid in full. The above ledger has been amended to reflect current amount due.
12. The landlord said that the tenant was given 3 separate termination notices (LL#03) and she had not moved out on the termination dates. She explained that they did a home inspection on 15-August-2023 and that the tenant told her at that time she would be moving out that night. The landlord is seeking the full amount of rent for the month of August as they had no idea when the tenant would finally move. She confirmed they had a new renter in the apartment as of 01-September-2023.

Tenant's Position

13. The tenant does not dispute the landlord's claim.

Analysis

14. Non-payment of rent is a violation of the rental agreement (LL#02). There is no dispute to the claim.
15. The tenant shall pay the landlord the rent owed totaling \$3,560.00.

Decision

16. The landlord's claim for rent succeeds in the amount of \$3,560.00.

Issue 2: Late fees \$75.00

Landlord's Position

17. The landlord has proven, in the table in paragraph 10, that the tenant has been in rental arrears as of 02-June-2023 and they are seeking the maximum allowed late fees.

Tenant's Position

18. The tenant does not dispute the claim.

Analysis

19. 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.

20. As the tenant has been arrears since 03-June-2023, the landlords are entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 3: Security deposit applied against monies owed \$700.00

Landlord's Position

22. The landlord stated in paragraph 09 that the tenant paid a security deposit of \$700.00 on 01-July-2017 and they are still in possession of the deposit. The landlord is requesting to retain the security deposit against monies owed.

Tenant's Position

23. The tenant was concerned that the payment made by her may have been less than the \$700.00 stated; she does accept the landlord's record of the payment as shown in the rent ledger (LL#04).

Analysis

24. The landlord's claim for losses has been successful, paragraphs 16 and 21, and they shall retain the 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

25. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$700.00.

Issue 4: Hearing expenses reimbursed \$20.00

26. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#05) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

Summary of Decision

27. The tenant shall:

- Pay the landlord \$2,955.00 as follows:
 - Rent \$3,560.00
 - Late fees 75.00
 - Hearing expenses 20.00
 - Security deposit applied (700.00)
 - Total \$2,955.00

The landlord

- Shall retain the security deposit of \$700.00.

September 22, 2023

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office