

Residential Tenancies Tribunal

Application 2023-No.0893 -NL

Decision 23-0893-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:04 a.m. on 04-October-2023.
2. The applicants, [REDACTED] and [REDACTED], represented by [REDACTED], hereinafter referred to as “the landlord” he attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.
4. The tenant submitted an authorized representative form (TT#01), naming [REDACTED] [REDACTED] as his representative, she is hereinafter referred to as “the authorized representative” and she attended by teleconference.

Preliminary Matters

5. The tenant had submitted a counter claim 2023-0920-NL, however they did not serve the landlord with notification of today’s hearing 10 or more days prior to the hearing. This file is dismissed.
6. The landlord submitted an affidavit (LL#01) stating that they had served the tenant on 22-September-2023 with notification of today’s hearing. The tenant and his authorized representative confirmed notification as stated.
7. The landlord amended his application to remove vacant possession as the tenant has moved.

Issues before the Tribunal

8. The landlord is seeking:
 - Rent \$1,000.00
 - Late fees \$75.00
 - Security deposit applied to monies owed \$500.00
 - Hearing expenses reimbursed \$20.00

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 7: Provision of rental agreement and information, and Section 24: Notice where tenant contravenes peaceful enjoyment, Section 15: Fee for failure to pay rent and Residential Tenancies Act, 2018 Regulations.

Issue 1: Rent

Landlord's Position

11. The landlord reviewed the terms of the written monthly rental agreement held with the tenant. The tenant took occupancy 03-September-2022 in January 2023 the tenant's partner gave notice. The tenant remained in the unit, he pays \$1,000.00 rent a month. The rental period is from the third day of the month until the second day of the following month. Rent is due in full on the third day of the month. Utilities are not included. A security deposit of \$500.00 was made on 03-September-2022 and the landlords are still in possession of the deposit.
12. The landlord confirmed that after the tenant's partner moved they took back access to the tenant's parking spot, he said that the tenant didn't have a car and they provided internet in lieu of the parking. He said that utilities are not included in the tenant's rent, however they do pay for the utilities as a perk, but this is not part of the agreement.
13. The landlord confirmed that there was a previous hearing for vacant possession however he did not meet the timelines required for the notice. The tenant moved out of the apartment on his own on 29-September-2023. The landlord states, the tenant did not pay rent for September. The landlord provided a rent ledger (LL#02) showing that rent was paid each month in full, however no payment was made for September.
14. The landlord is seeking full reimbursement of the rent.

Tenant's Position

15. The tenant confirms the details of the rent agreement as stated by the landlord. He said that once his partner moved he lost access to his parking spot, his rent didn't change, he acknowledges internet was provided in replacement of the parking space. He stated that there was supposed to be another agreement signed but he didn't receive the new agreement. The tenant's authorized representative said that utilities are also included in the rent and that the utilities are not in the tenant's name.
16. The authorized representative said that once the other renter moved in January, the rent remained the same, the tenant lost the use of a parking spot and the landlord never provided the tenant with a copy of the new written agreement.

Analysis

17. Non-payment of rent is a violation of the rental agreement. I accept the landlord's testimony and evidence that the tenant did not pay rent for the month of September. The tenant's rental period is from the 3rd day of the month until the 2nd day of the following month. Rent is paid for the use and enjoyment of the rental premises and as the tenant had moved and the landlord was in possession of the premises on 29-September-2023, the tenant shall only pay a daily rate to that date, as follows:

$$\begin{aligned}\text{Daily rate } 12 \text{ months} \times \$1,000.00 &= \$12,000.00 \\ \$12,000.00 \text{ divided by } 365 \text{ days} &= \$32.88 \\ \$32.88 \times 26 \text{ days (03 – 29 September)} &= \$854.88\end{aligned}$$

18. The tenant and his authorized representative have a valid concern that he was not provided with written details of his rental agreement. Once the previous renter moved and there were changes made to the agreement, the new agreement became oral or implied. In accordance with Section 7 of the *Residential Tenancies Act, 2018*, when the landlord and tenant enter into an oral or implied rental agreement, the landlord shall provide the tenant with a copy of the signed rental agreement. Until the tenant receives his copy his obligation to pay rent is suspended; as follows:

Provision of rental agreement and information

7. (1) At the time a landlord and tenant enter into a rental agreement, the landlord shall provide the tenant with a copy of this Act and the regulations, and where requested by the landlord, the tenant shall sign an acknowledgement of receipt.

(2) Where a landlord and tenant enter into a written rental agreement, the landlord shall provide the tenant with a copy of the signed rental agreement within 10 days after it is signed, and where requested by the landlord, the tenant shall sign an acknowledgement of receipt.

(3) Where a landlord and tenant enter into an oral or implied rental agreement, the landlord shall provide the tenant with a written notice containing the information prescribed in the regulations within 10 days after entering into the rental agreement, and where requested by the landlord, the tenant shall sign an acknowledgement of receipt.

(4) Notwithstanding the terms of a rental agreement, where a landlord has not complied with subsection (2) or (3), the tenant's obligation to pay rent is suspended and the landlord shall not require the tenant to pay rent until the landlord complies with subsection (2) or (3).

19. Therefore, I find that the landlord must first provide the tenant with written notice containing the information provided in the regulations as follows:

*Rental Agreement Notice Regulations
under the
[Residential Tenancies Act, 2018](#)*

REGULATIONS

Contents of notice

2. *Where a landlord and tenant enter into an oral or implied rental agreement, the written notice required under subsection 7(3) shall include*

- (a) the legal names of the landlord and the tenant;*
- (b) the landlord's telephone number, electronic address and civic address where documents may be received, delivered or served by the tenant;*
- (c) where the landlord has an agent or another person who is responsible for the residential premises, the name, telephone number, electronic address and civic address of the agent or other person where documents may be received, delivered or served by the tenant;*
- (d) where available, the tenant's telephone number and electronic address where documents may be received, delivered or served by the landlord;*
- (e) the civic address of the rental unit;*
- (f) the date on which the rental agreement was entered into;*
- (g) the statutory conditions in section 10;*
- (h) the date on which the tenancy starts;*
- (i) whether the rental agreement is from week to week, month to month or for a fixed term;*
- (j) where the rental agreement is for a fixed term, the termination date of the tenancy;*
- (k) the amount of rent payable for a specified period and the day within that specified period upon which rent is due;*
- (l) the amount of the security deposit paid and the date on which it was paid; and*
- (m) any other terms and conditions of the rental agreement.*

20. I find that once the landlord has provided the tenant with the regulations the tenant shall pay to the landlord \$854.88 for rent as his obligation is only suspended and not terminated.

Decision

21. The landlord shall provide the tenant with written notice containing the information provided in the regulations and then the tenant shall pay to the landlord \$854.88 for rent.

Issue 2: Late fees \$75.00

Relevant Submissions

22. The landlord has proven, paragraph 21, that the tenant has been in rental arrears as of 04-September-2023 and is seeking the maximum allowed late fees.

Analysis

23. 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.

24. Although it has been determined (paragraph 21) that the tenant is in rent arrears, it has also been established that the landlord has not met the conditions of Section 7 of the *Residential Tenancies Act, 2018*. As the tenant's obligation to pay rent is suspended until the landlord first meets the conditions required, the tenant shall not be charged for late fees.

Decision

25. The landlord's claim for late fees fails.

Issue 3: Security deposit applied against monies owed \$500.00

Relevant Submissions

26. The landlord stated in paragraph 11 that the tenant paid a security deposit of \$500.00 on 03-September-2022 and they are still in possession of the deposit. The landlord is requesting to retain the security deposit against monies owed.

Analysis

27. The landlord's claim for loss has been successful, paragraph 21, 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

28. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$500.00.

Issue 2: Hearing expenses reimbursed \$20.00

29. The landlord and the tenant submitted the receipt for \$20.00 for the cost of the hearing (LL#03 & TT#02) and pursuant to policy 12.01, as the landlord's claim has been successful they are entitled to reimbursement of that cost from the tenant.

Summary of Decision

30. The tenant shall:

- Pay the landlord \$374.88 as follows:
 - Rent \$854.88
 - Hearing expenses 20.00
 - Security deposit applied (500.00)
 - Total \$374.88

The landlord shall:

- Provide the tenant with written notice containing the information provided in the regulations.
- Retain the \$500.00 security deposit against monies owed.

October 11, 2023

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office