

Residential Tenancies Tribunal

Application 2023-0902-NL

Decision 2023-0902-00

Seren Cahill
Adjudicator

Introduction

1. Hearing was called at 11:17 p.m. on 17-October-2023.
2. The applicants, [REDACTED] and [REDACTED] were 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. 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 an affidavit with her application stating that she had served the tenant with the notice of hearing electronically by email; [REDACTED] on 06-Oct-2023, and attached screenshots showing the email as well as a reply from [REDACTED] stating “Okay. See you there.” In accordance with the *Residential Tenancies Act, 2018*. 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 tenant’s absence.
5. There was a written term rental agreement which commenced on 01-Dec-2019. The tenant vacated the unit on 30-Sep-2023. Rent was initially \$550 per month due on the first day of each month. Beginning with the month of December in 2022, the rent was increased to \$600 a month. A security deposit of \$225.00 was paid on 01-Sep-2019 and has been retained by the landlord. A term in the rental agreement stipulated that the security deposit would be forfeited in the event that the rent was unpaid or that 30 days’ notice of termination was not given.
6. The landlord amended the application to omit vacant possession as the tenant has vacated the unit.

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 \$1800.00
- Late fees \$75.00
- Security deposit applied against monies owed \$225.00

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 \$1800.00

Relevant Submissions

11. The landlord testified that rent is outstanding in the amount of \$1800.00 and submitted a rental ledger to support his claim (LL#1). See ledger below:

Rents owed by [REDACTED] for [REDACTED]

2023-07-01	\$600.00
2023-07-31	Late fee
2023-08-01	\$600.00
2023-08-30	Late fee
2023-09-01	\$600.00
Total Owed	1875.00

Signed: [REDACTED]

Landlord's Position

12. The landlord testified that rent has not been paid in full since June 2023 and there is currently an outstanding balance of \$1800.00.

Analysis

13. 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

14. Non-payment of rent is a violation of the rental agreement. The landlord testified that there were rental arrears in the amount of \$1800.000.

15. I find the tenant is responsible for outstanding rent in the amount of \$1800.00 for the period of 01-July-2023 to 01-Oct-2023.

Decision

16. The landlord's claim for rent paid succeeds in the amount of \$1800.00.

Issue # 2: Late Fees \$75.00

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

Landlord's Position

18. The landlord stated that rent was unpaid for three months and seeks the maximum allowable late fee of \$75.

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

Decision

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

Issue # 3: Security Deposit applied against monies owed \$225.00

Landlords Position

24. The landlord testified that the rental agreement includes a clause forfeiting the security deposit to her in the event of nonpayment of rent, and that this clause ought to be enforced.

Analysis

25. The terms of a rental agreement are part of a binding contract only insofar as they do not conflict with the law. Section 14(8) of the *Residential Tenancies Act, 2018* states:

Security deposit

14. (8) *A security deposit is not an asset of the landlord but is held by the landlord in trust and may be used, retained or disbursed only as provided in this section.*

Therefore, any clause purporting to allow the landlord to use, retain, or disburse the security deposit is invalid unless it conforms to the rest of this section.

26. Section 14(10) of the *Residential Tenancies Act, 2018* lists the only ways a landlord can make a claim on the security deposit:

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.

27. There was no written agreement that meets the criteria above presented at the hearing. While the rental agreement is a written agreement that concerns the security deposit, the wording above strongly implies that the written agreement must be entered into after the landlord believes they have a claim. The same agreement cannot be both the basis of a claim and an agreement on the resolution of that same claim. This is distinct from contracts containing clauses which merely provide for a forum or method of dispute resolution.

28. The landlord did not apply under section 42 of the *Residential Tenancies Act, 2018* to determine the disposition of the deposit. As the requirements of s. 14 are not met, the landlord's claim for the security deposit must fail.

29. The landlord's claim for rental arrears and late fees has succeeded. In accordance with Section 42 of the *Residential Tenancies Act, 2018*, I find that the security deposit will be applied against monies owed.

Decision

30. The security deposit of \$225.00 shall be applied against monies owed.

Issue # 4: Hearing Expenses \$20.00

31. The landlord paid an application fee of \$20.00 to Residential Tenancies and provided a copy of the receipt (LL#2).

32. As the landlord's claim has been successful, the tenant 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 \$1670.00 as follows:

Rent	\$1800.00
Late Fees.....	\$75.00
Hearing expenses.....	\$20.00
Less Security deposit	<u>(\$225.00)</u>
Total.....	<u>\$1670.00</u>

October 20, 2023

Date


Seren Cahill
Residential Tenancies Office