

Residential Tenancies Tribunal

Application 2023-No.0950 -NL

Decision 23-0950-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 1:48 p.m. on 05-December-2023.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord" attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as "the tenant" attended by teleconference.
4. The respondent's spouse, [REDACTED], hereinafter referred to as "the occupant" attended by teleconference.

Preliminary Matters

5. The landlord submitted an affidavit (LL#01) stating that she served the tenant with notification of today's hearing electronically on 01-November-2023. The tenant confirmed receipt of notification.
6. There was a previous application, and the parties reached a mediated agreement on 04-October-2023; the agreement determines that the tenants would move on 15-October-2023. (2023-0797-NL). Both parties confirm that the tenants moved on that date.
7. The landlord's application was amended to include security deposit \$1,000.00, applied against monies owed.

Issues before the Tribunal

8. The landlord is seeking:
 - Rent \$2,000.00
 - Late fees \$15.00
 - Security deposit applied against monies owed \$1,000.00

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 14: Security deposit, and Section 15: Fee for failure to pay rent.

Issue 1: Rent \$2,000.00

Landlord's position

11. The landlord stated that they have a written term rental agreement (LL#02). The agreement with the tenant is from 01-October-2022 until 01-October-2023. The agreement then became a monthly agreement. The tenant pays \$2,000.00 rent 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 \$1,000.00 on 21-September-2022 and she is still in possession of the deposit.
12. The landlord explained that she had given the tenant's a notice to terminate and that they had a previous application number. At that time the mediated agreement stated that the tenant's would vacate on 15-October-2023. She confirms that they did move on that date. (Paragraph 6)
13. The landlord submitted a rent ledger (LL#02) and testified that rent was paid up until the end of September. She said that she is seeking rent for October. She confirms that she did start advertising as soon as the tenant's moved, she said that the house is still not rented. She is seeking the full month's rent, because at the time the tenant's vacated they were in a monthly agreement and that she doesn't rent week to week.

Tenant's position

14. The tenant confirmed the rental agreement as stated.
15. The tenant disputes that he owes rent, he stated that during the mediated agreement he told the landlord she could retain the security deposit of \$1,000.00 for the half a month's rent that is owed. He does not agree that he should pay the additional weeks rent.

Analysis

16. Rent is paid for use and enjoyment of the rental premises. As the landlord terminated the rental agreement and both parties confirm that the tenants did move as agreed on 15-October-2023 then the tenant is only responsible for rent up until that time.

17. The tenant agreed that the landlord could retain the \$1,000.00 security deposit against the \$1,000.00 rent owed. I agree with the tenant that this matter has already been resolved.

Decision

18. The landlord's claim for rent succeeds in the amount of \$1,000.00.

Issue 2: Late fees \$15.00

Relevant Submissions

19. The landlord is seeking \$15.00 in late fees against rent owed.

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. It has been determined that the landlord had the consent of the tenant to retain the security deposit against rent owed on 04-October-2023 (Paragraphs 6 & 15). Late fees will be applied at a rate of \$5.00 for 02-October-2023 and \$2.00 for 03-October-2023; for a total of \$7.00.

Decision

22. The landlord's claim for late fees succeeds in the amount of \$7.00.

Issue 3: Security deposit applied against monies owed \$1,000.00

Relevant Submissions

23. The tenant agreed during the mediation agreement for the landlord to retain the \$1,000.00 security deposit against the \$1,000.00 rent for ½ of October.
24. The occupant questions why the landlord did not return the security deposit if they didn't apply it to rent owed as agreed.

Analysis

25. As the parties have an agreement on the disbursement of the deposit the landlord shall retain the security deposit against rent owed.

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

26. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$1,000.00.

Summary of Decision

27. The tenant shall pay the landlord \$7.00 for late fees.

The landlord shall retain the security deposit of \$1,000.00 for rent owed.

December 12, 2023

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office