

Residential Tenancies Tribunal

Application 2023-1100-NL

Decision 23-1100-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 2:09 p.m. on 19-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” did not attend.

Preliminary Matters

4. The tenant was not present or represented at the hearing, and I was unable to reach her 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 she has been properly served. The landlord submitted an affidavit with his application stating that he had served the tenant with the notice of hearing electronically by email to; [REDACTED] and by text to; [REDACTED] [REDACTED] on 28-November-2023 (LL#1). The landlord submitted a copy of the sent email as proof of service (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 was a written term rental agreement which commenced on 1-July-2022. The tenant vacated the unit on 3-April-2023. Rent was \$1400.00 per month due on the first of each month. A security deposit of \$1050.00 was paid on 1-June-2022 and is still in the landlord’s possession.
6. 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

7. The landlord is seeking:
 - a. Rent paid \$3200.00
 - b. Hearing expenses \$20.00
 - c. Security deposit applied against monies owed \$1050.00

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
9. 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.

Issue # 1: Rent Paid \$3200.00

Relevant Submissions

10. The landlord testified that rent is outstanding in the amount of \$3200.00 and submitted a rental ledger to support his claim (LL#3). See breakdown of ledger below:

Rental Ledger 2023-1100-NL			
Date	Action	Amount	Total
February 28, 2023	Balance	\$0.00	\$0.00
March 1, 2023	Rent due	\$1,400.00	\$1,400.00
March 1, 2023	Payment	-\$1,000.00	\$400.00
April 1, 2023	Rent due	\$1,400.00	\$1,800.00
May 1, 2023	Rent due	\$1,400.00	\$3,200.00

Landlord's Position

11. The landlord testified that rent was partially paid in March leaving a balance of \$400.00. The landlord stated that he is also seeking rent to be paid in full for April and May as the tenant abandoned the unit on 3-April-2023 leaving the unit in a condition whereby he was unable to have it ready to re rent. The landlord stated that there was damage to the unit, it needed to be professionally cleaned, plastered and painted. The landlord stated that the tenant left 4 pickup loads of garbage.

Analysis

12. 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

- a. rented from month to month,**
- b. rented for a fixed term, or**

- c. a site for a mobile home, and

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.

(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*

13. Non-payment of rent is a violation of the rental agreement. The landlord testified that there is outstanding rent in the amount of \$3200.00 for the months of March, April and May. Rent is required to be paid by the tenant for the use and occupation of the rented premises. The landlord testified that the tenant abandoned the property on 3-April-2023 and he was unable to get the unit ready to rent until the end of May 2023. The tenant was required to give 1 month's termination notice whereby he is responsible for rent for the month of May. I asked the landlord if he rented the unit in May, and he stated that he made every effort to do so but was unsuccessful due to damages to the unit. The landlord testified that he had to hire a professional cleaner, hire a painter to plaster and paint the walls and he also had to remove 4 truckloads of garbage from the unit. I accept that the landlord made every effort to mitigate his losses and I accept the landlord's testimony regarding the condition of the unit. The tenant was not available to dispute the landlord's claim and as such, I find that the tenant is responsible for rent up to the end of May 2023.

Decision

14. The landlord's claim for rent paid succeeds in the amount of \$3200.00.

Issue # 2: Security Deposit applied against monies owed \$1050.00

Analysis

15. Section 14 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.
- (9) Not later than 10 days after the tenant vacates the residential premises, the landlord shall return the security deposit to the tenant unless the landlord has a claim for all or part of the security deposit.
- (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.
- (11) Where a tenant makes an application under paragraph (10)(b), the landlord has 10 days from the date the landlord is served with a copy of the tenant's application to make an application to the director under paragraph (10)(b).

16. The landlord's claim for losses has been successful as per paragraph 14, and as such the security deposit shall be applied against monies owed.

Decision

17. The security deposit of \$1050.00 shall be applied against monies owed.

Issue # 4: Hearing Expenses \$20.00

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

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

Decision

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

Summary of Decision

21. The tenant shall pay the landlord \$2170.00 as follows:

Rent	\$3200.00
Hearing expenses.....	20.00
Less Security deposit	<u>\$1050.00</u>
 Total.....	 <u>\$2170.00</u>

January 10, 2024

Date

Pamela Pennell
Residential Tenancies Office