

Residential Tenancies Tribunal

Application 2023-No.1102-NL

Decision 23-1102-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:15 a.m. on 09-January-2024.
2. The applicant, [REDACTED], 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. The tenant was not present or represented at the hearing and I was unable to reach him by telephone at the start of the hearing as there was no number available. 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 the 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 he has been properly served. The landlord submitted an affidavit (LL#01) with their application stating that they had served the tenant with notice of the hearing, by prepaid registered mail. The tracking number ([REDACTED]) shows that the package was mailed on 21-December-2023, in accordance with the *Residential Tenancies Act, 2018*, Section 35, this package is considered served after 5 days. 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 his absence.
5. The landlord amended their application to decrease rent from \$1,043.76 to \$969.76 to reflect the current amount of rent due.
6. The tenant was removed from his unit on 08-January-2024 by Order 2023-1004-NL. As the tenancy has ended the landlord is no longer seeking vacant possession. The landlord has amended their claim to include security deposit retained against monies owed.

Issues before the Tribunal

7. The landlord is seeking:
 - Rent \$969.76
 - Late fees \$75.00
 - Security deposit applied against monies owed \$671.25
 - Hearing Expenses \$20.00

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

Issue 1: Rent \$969.76

Relevant Submissions

10. The landlord stated they entered a written monthly agreement with the tenant beginning 21-November-2022. The landlord explained that they had a vacant possession order from a previous hearing (2023-1004-NL) that was enforced by the Sheriff's Department yesterday; 08-January-2024. The tenant pays \$918.00 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 had fully paid their security deposit of \$671.25 by 26-January-2023 and they are still in possession of the deposit.
11. The landlord explained that the tenant receives income support and one of the funds was decreased, this has caused the tenant to fall behind in his rent. She said in September he had a credit on his account, currently he is behind. She submitted a rent ledger (LL#02), as follows:

Rent ledger
2023-1102-NL

Date	Action	Amount	total
29-Sep-23	balance	148.33	148.33
29-Sep-23	AES subsidy	-110.50	37.83
29-Sep-23	AES subsidy	-110.50	-72.67
29-Sep-23	NFLD Housing subsidy	-275.00	-347.67
1-Oct-23	Rent due	895.00	547.33
31-Oct-23	NFLD Housing subsidy	-275.00	272.33

1-Nov-23	Rent due	895.00	1167.33
1-Nov-23	AES subsidy	-110.50	1056.83
1-Nov-23	AES subsidy	-110.50	946.33
30-Nov-23	NFLD Housing subsidy	-275.00	671.33
1-Dec-23	Rent due	918.00	1589.33
1-Dec-23	AES subsidy	-110.50	1478.83
1-Dec-23	AES subsidy	-110.50	1368.33
29-Dec-23	NFLD Housing subsidy	-275.00	1093.33
29-Dec-23	AES subsidy	-110.50	982.83
29-Dec-23	AES subsidy	-110.50	872.33

12. The landlord removed the cost of January rent as the tenant was removed from the apartment on 08-January-2024.

Analysis

13. 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 totaling \$872.33 and find that the tenant will pay this to the landlord.

Decision

14. The landlord's claim for rent succeeds in the amount of \$872.33.

Issue 2: Late fees \$75.00

Relevant Submissions

15. The landlord has shown in the rent ledger, paragraph 11, that the tenant has been in rental arrears as of 02-October-2023 and is seeking the maximum allowed late fees.

Analysis

16. 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.*

17. As the tenant has been arrears since 02-October-2023, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 3: Security deposit applied against monies owed \$671.25

Relevant Submissions

19. The landlord stated in paragraph 10 that the tenant paid a security deposit of \$671.25 and they are still in possession of the deposit. The landlord is requesting to retain the security deposit against monies owed.

Analysis

20. The landlord's claim for losses has been successful, paragraphs 14 and 18, 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

21. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$671.25.

Issue 4: Hearing expenses reimbursed \$20.00

22. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#03) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

Summary of Decision

23. The tenant shall pay the landlord \$296.08 as follows:

- Rent \$872.33
- Late fees 75.00
- Hearing expenses 20.00
- Security deposit applied (671.25)
 - Total \$296.08

The landlord shall retain the security deposit of \$671.25 against monies owed.

January 15, 2024

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office