

Residential Tenancies Tribunal

Application 2024-0031-NL

Decision 2024-0031-NL

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 1:46 PM on 7 February 2024 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, attended the hearing. The landlord did offer testimony and did not call any witnesses.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant”, attended the hearing. The tenant did offer testimony and did not call any witnesses.
4. The details of the claims were presented as a 12-month fixed term written rental agreement which started on 17 April 2023 with rent set at \$2,900.00 and due on the last day of each month (**Exhibit L # 1**). There was a security deposit collected on this tenancy which the landlord was still in possession, in the amount of \$1,450.00, which was collected on 29 March 2023. The tenant vacated the two-bedroom home on 1 November 2023.
5. The landlord did not provide a sworn affidavit of service with her application, but testified she served the tenant electronically on 21 January 2024. The tenant confirmed receipt of the Application for Dispute Resolution and wished to continue with the hearing without the affidavit of service.
6. In a proceeding under the *Residential Tenancies Act*, 2018, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicant has to establish that his/her account of events are more likely than not to have happened.

Preliminary Matters

7. The landlord did not amend her application at the hearing, seeking rental arrears owing (\$9,075.00), along with the security deposit against monies owing.

Issues before the Tribunal

8.. The landlord is seeking the following:

- An order for payment of rent in the amount of \$9,075.00;
- Late Fees in the amount of \$225.00; and
- Security deposit to be used against monies owing.

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 case is S. 14, 15, 18, 34, 35, and 42 of the *Residential Tenancies Act*, 2018.

Issue 1: Rent Owing- \$9,075.00

Landlord position

11. The landlord stated there had been a written monthly rental agreement established with the tenant, who moved into the rental on 17 April 2023 with rent set at \$2,900.00 per month, including all utilities in the furnished apartment (**Exhibit L # 1**).
12. The landlord testified that the last time the tenant was at a zero balance was in July 2023 and he started to accumulate rental arrears during the summer 2023.
13. The landlord stated the tenant vacated the rental property and she was seeking rental arrears owing between August 2023 and December 2024 as the tenant broke the fixed term rental agreement. On 5 October 2023, the landlord testified was the last payment received from the tenant.
14. Along with her application, the landlord provided a rental ledger (**Exhibit L # 2**). This piece of evidence reveals the following information:

Date	Transaction	Due	Paid	Balance
12 Aug 2023	Payment	\$2,900.00	\$500.00	\$2,400.00
23 Aug 2023	Payment	\$2,400.00	\$2,000.00	\$400.00
31 Aug 2023	Sept Rent due	\$2,900.00		\$3,300.00
6 Sept 2023	Payment		\$400.00	\$2,900.00
23 Sept 2023	Payment		\$1,100.00	\$1,800.00
30 Sept 2023	Oct Rent due	\$2,900.00		\$4,700.00
5 Oct 2023	Payment		\$1,800.00	\$2,900.00
31 Oct 2023	Nov Rent due	\$2,900.00	\$0.00	\$5,800.00
30 Nov 2023	Dec Rent due	\$2,900.00	\$0.00	\$8,700.00

15. The landlord stated a new tenant was in the rental unit by 1 January 2024.

Tenant's position

16. The tenant testified he received the Application for Dispute Resolution on 17 January 2024. The tenant offered testimony that beginning in July 2023, he started accumulating rental arrears as he was experiencing financial challenges.
17. The tenant confirmed he moved out of [REDACTED] on 1 November 2023 and he did not dispute the rental arrears suggested by the landlord. He expressed his wish to reimburse the landlord and his focus on moving forward from his current financial situation.

Analysis

18. Non-payment of rent is a violation of the rental agreement. The landlord was seeking outstanding rental arrears up until December 2023.
19. The landlord and tenant both stated the respondent was out of the rental by November 2023. The landlord testified by January 2024, a new tenant was in the rental unit.
20. Section 18 of the *Residential Tenancies Act*, 2018 states the following, "18.(1) A tenant shall give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises, © not less than two months before the end of the term where the residential premises is rented for a fixed term". The tenant did not provide the landlord a required two-month notice that he would be vacating the rental property.
21. I accept both the landlord and the tenant's testimony that there are rental arrears owing.

Decision

22. The landlord's claim for a payment of the rent succeeds in the amount of **\$8,700.00**.

Issue 2: Late Fees- \$225.00

23. The landlord testified the tenant has been incurred late fees since August 2023.
24. Along with her application, the landlord provided a rental ledger which includes those identified late fees (**Exhibit L # 2**).
25. The tenant does not dispute holding late fees.

Analysis

26. Section 15 of the *Residential Tenancies Act*, 2018 offers clear direction regarding fees for failure to pay rent. As noted in section 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”.

27. 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.

Decision

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

Issue 3- Security Deposit used against monies owing.

29. The landlord is seeking to retain the security deposit of \$1,450.00. The landlord testified that the tenant had paid a security deposit of \$1,450.00 on 29 March 2023 and submitted evidence to support this claim (**Exhibit L # 1**). As the landlord's claim has succeeded, the security deposit plus applicable interest at the rate prescribed by the Security Deposit Interest Regulations shall be applied against monies owed [$\$1450 * 1\% * (39/366 \text{ days}) = \$1.55 \text{ total interest}$].

Decision

30. The landlord's claim for retention on the security deposit succeeds.

Summary of Decision

31. The landlord is entitled to the following:

- A payment of **\$7,325.00**, as determined as follows:
 - a) Rent owing\$8,700.00
 - b) Late Fees.....\$75.00
 - c) **Less Security Deposit/Interest.....\$1,451.55**
 - d) Total.....**\$7,323.45**

26 April 2024

Date



Michael J. Reddy
Residential Tenancies Office