

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0012-04

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:45 a.m. on 1-November-2021.
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.
4. The Landlord had a witness, [REDACTED] from the accounting department, hereinafter referred to as “the witness.”

Preliminary Matters

5. The tenant was not present or represented at the start of the hearing and I was unable to reach him by telephone. 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 ([REDACTED] #01) with her application stating that she served him electronically, on 09-September-2021, at an email provided by the tenant. 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.

Issues before the Tribunal

6. The landlord is seeking:
 - Rent paid \$1,909.67
 - Security deposit applied against rent owing \$1,200.00
 - Hearing expenses reimbursed \$20.00

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
8. Also relevant and considered in this case is Rule 29 of the Rules of the Supreme Court, 1986.

Issue 1: Rent owed \$1,909.67

Relevant Submissions

9. The landlord submitted a rental agreement (█#02) for a rent to own. It is for a term beginning 01-July-2018 ending 30-September-2019. Beginning on 01-October-2019 this agreement becomes a monthly agreement with no rent to own option, as per Appendix A (iv), of the Rental Agreement (█#02).
10. The monthly agreement is for \$1,600.00 pay own utilities. The rental period is from the 1st to the end of each month. The landlord made an accommodation that the tenant could pay the rent up to the 6th day of each month. The tenant also paid \$1,200.00 security deposit on 29-June-2018; the landlord is still in possession of this security deposit.
11. The landlord submitted the rent ledger for the house (█#03). The ledger shows two payments of \$1,600.00 the first in June 2019 and the second in November 2019. These appeared to be in addition to regular monthly payments.
12. The landlord called the witness and she testified that these were not additional payments, they are payments that had come in prior to the invoice being sent out. She stated that they have the same action number as the rent payment, which indicates that they are early rent payments not additional money paid.
13. The landlord said that the tenant did not pay June 2021 rent and he moved on 06-July-2021, the accounting department calculated a daily amount totaling \$309.67 for the six days in July. The landlord is seeking this rent totaling \$1,909.67, paid.

Analysis

14. I accept the landlord's testimony that rent is owed to the landlord. This testimony was corroborated by the submission of the rent ledger (█#02) indicating that a balance of \$1,909.67 was outstanding for rent for June and the first six days of July 2021.
15. Non-payment of rent is in violation of the rental agreement made between the landlord and tenant.

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16. The tenant owes the landlord \$1,909.67 for rent.

Issue 2: Security deposit applied against rent owing

Relevant Submissions

17. The landlord said the tenants paid a security deposit of \$1,200.00, in paragraph 10. They are still in possession of this deposit.
18. The landlord is requesting to retain the security deposit and apply it against monies owed for rent.

Analysis

19. As per section 14.10 of the *Residential Tenancies Act, 2018*:
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.
20. As the landlord's claim for rent has been successful, they shall retain the entire security deposit of \$1,200.00 towards the rent that is owing.

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21. The landlords request to retain the security deposit of \$1,200.00 against rent owing succeeds.

Issue 3: Hearing expenses reimbursed \$20.00

22. The landlord submitted the receipt for \$20.00 for the cost of the hearing (█#04) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

Summary of Decision

23. The landlord is entitled to the following:

- Rent..... \$1,909.67
- Hearing fees..... 20.00
- Less security deposit..... (1,200.00)
- **Total** **\$ 729.67**

November 4, 2021
Date

