

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0023-01

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 2:02 p.m. on September 28, 2021, via teleconference.
2. The applicant, [REDACTED] hereinafter referred to as “the landlord” attended by teleconference. Her husband [REDACTED] did not attend.
3. The respondent, [REDACTED] hereinafter referred to as “the tenant” attended by teleconference. His partner [REDACTED] did not attend.

Preliminary Matters

4. The landlord submitted an Affidavit of Service ([REDACTED] #01), that she amended to show the date she served the notice of the hearing September 09, 2021 instead of the date she signed the Affidavit, Sept 20, 2021.
5. The tenant was unaware of the hearing, he found the email in his junk folder dated for September 09, 2021.
6. The tenant provided the landlord with this email address for communication.
7. This is considered good service and the tenant attended the hearing.
8. The landlord amended her application initially she was seeking vacant possession, rent paid \$850.00, late fees of \$13.00, hearing expenses reimbursed, and the security deposit applied against what is owing. The tenants moved out on the date of termination August 17, 2021. The landlord amended her claim to reflect that change, as shown in paragraph 9.

Issues before the Tribunal

9. The landlord is seeking:
 - Rent paid \$850.00
 - Late fees \$37.00
 - Hearing expenses \$35.75

- Security deposit of \$500.00 applied against what is owed.

Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
11. Also relevant and considered in this case is section 15 and section 19 of the *Residential Tenancies Act, 2018*: notice when failure to pay rent, section 34: requirements for notices, section 35: Service of documents.

Issue 1: Rent owing \$850.00

Landlord Position

12. The tenants took occupancy in June 2019, each year they sign a new term rental agreement beginning on July 1 and ending on June 30. This year the tenants signed a written rental agreement on May 4, 2021 for the July 01, 2021 – June 30, 2022 period. The monthly rent for the new lease is \$900.00 p.o.u. The rent is due on the last day of every month. A security deposit was paid for \$500.00 on June 30, 2019. Receipt for security deposit provided (█#02).
13. The landlord provided the rent ledger (█#02) showing an amount owing of \$850.00 for rent owing.
14. The tenants had paid \$1,000.00 on July 20, 2021 which covered July rent and late fees of \$950.00. There was an additional \$50.00 paid which is applied against the \$900.00 August rent for a balance of \$850.00 owing.

Tenant Position

15. The tenant doesn't agree that he should pay the full amount for August as he moved on August 17, 2021.
16. The tenant was given an eviction notice for August 17, 2021.

Analysis

17. The tenants moved out on their termination date, August 17, 2021. The rent for August should be calculated as follows: \$900 rent x 12 months = \$10,800.00. The yearly amount of \$10,800.00 divided by 365 days = \$29.59 per day. 17 days x \$29.59 = \$503.03.
18. August rent owing is \$503.03 minus the additional \$50.00 paid on July 20, 2021 = \$453.03 balance owing for August.

Decision

19. The landlord's claim for rent succeeds in the amount of \$453.03.

Issue 2: Late Fees

Landlord's Position

20. The landlord submitted a rent ledger (█#03) indicating late fees beginning on the first day August. For a total of \$37.00

Analysis

21. The relevant subsections of s.15 of the Residential Tenancies Act, 2018 state:

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.

22. As the rent is due on the last day of each month, if it is not paid in full, late fees would begin on the 1st day of the month. The tenant's last rent day is August 17, 2021 which is \$37.00 late fees.

Decision

23. The landlord's claim for late fees in the amount of \$37.00 succeeds.

Issue 3: Hearing expenses \$35.75

Landlord's Position

24. The landlord submitted her receipt for \$20.00 to file for this hearing (█#07) and for the cost of a commissioner of oaths (█#06) for \$15.75.

Decision

25. As the landlord's claim is successful the tenant shall reimburse the landlord for the cost of the hearing fees totaling \$35.75.

Issue 4: Security deposit of \$500.00 applied against payment owed

The landlord's Position

26. The landlord provided a receipt for the security deposit (█#02) showing the tenants paid a security deposit of \$500.00. She has applied to this Tribunal to have the late fees applied against monies owed.

Decision

27. As the landlord's claim has been successful, she shall retain the \$500.00 deposit towards the amount owing.

Summary of Decision

28. The landlord is entitled to the following:

• Rent owing.....	\$453.03
• Late fees.....	37.00
• Hearing Expenses.....	35.75
○ Less Security deposit	<u>(500.00)</u>
Total	<u>\$ 25.78</u>

The tenant shall pay the landlord \$25.78.

October 5, 2021
Date



Jacqueline Williams, Adjudicator
Residential Tenancies Office