

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0062-01

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:16 a.m. on 16-March-2022.
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 her by telephone 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 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 she 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, on 31-December-2021, electronically to an email provided to them 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 her absence.

Issues before the Tribunal

5. The landlord is seeking:
 - Rent \$755.00
 - Late fees \$75.00
 - Security deposit applied to monies owed \$362.00
 - Hearing Expenses \$20.00

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
7. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 14: Security deposit, Section 15: Fee for failure to pay rent and Section 18: Notice of termination of rental agreement.

Issue 1: Rent \$755.00

Relevant Submissions

8. The landlord said that the tenant moved in 01-October-2020 and she signed a term rental agreement that ended 30-September-2021. In October 2021, this agreement became a monthly agreement.
9. The rental agreement was for \$725.00 for the first year and then on 01-October-2021 the rent increased to \$735.00 per month, utilities are not included. The rental period is from the 1st day of the month to the last. The rent is due on the 1st day of the month. The tenant paid a security deposit of \$362.00 on 01-October-2020 when she moved in; the landlord is still in possession of that deposit.
10. The landlord submitted an email dated 21-October-2021 from the tenant, in the email she tells him that she is giving him 2 weeks' notice and will be moving the end of the month. She did not return the keys at the end of the month and they had to rekey the locks.
11. The landlord submitted a rent ledger (LL#03). See below:

Rent ledger

Date	Action	Amount	total
1-Aug-21	Rent due	\$725.00	725.00
3-Aug-21	rent paid	-725.00	0
1-Sep-21	rent due	\$735.00	735.00
2-Sep-21	rent paid	-725.00	10.00
1-Oct-21	rent due	\$735.00	745.00
5-Oct-21	rent paid	-725.00	20.00
1-Nov-21	rent due	\$735.00	755.00

12. The landlord stated in paragraph 9 that after the first year, the tenant's rent increased by \$10.00 a month. He said that the tenant was provided notification of the increase 6 months prior. He points out, that in the rent ledger, the rent increase took effect in September. He said that that increase should not have been applied and he is asking that she be credited the \$10.00 for September.

13. The landlord said that the tenant should have given notice for the end of November and he is requesting that she pay rent in lieu of notice.
14. The landlord is seeking \$745.00 in rent.

Analysis

15. Section 18 of the Residential Tenancies Act, 2018, states:

Notice of termination of rental agreement

18. (1) A tenant shall give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises

(a) not less than 7 days before the end of a rental period where the residential premises is rented from week to week;

(b) not less than one month before the end of a rental period where the residential premises is rented from month to month; and

(c) not less than 2 months before the end of the term where the residential premises is rented for a fixed term.

....

16. The tenant's requirement of notice is one full rental period, which would be the end of November, as argued by the landlord.
17. The tenant is responsible to pay rent until the end of the notice period and therefore owes the landlord for November's rent, as well as, the increase in rent for October.

Decision

18. The landlord's claim for rent succeeds in the amount of \$745.00.

Issue 2: Late fees \$75.00

Relevant Submissions

19. The landlord said that the tenant did not pay all of her rent in October and she still owes the full rent for November. The landlord is claiming late fees for failure to pay rent.

Analysis

20. 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.

21. As the tenant has been arrears since 02-October-2021, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 3: Security deposit applied to monies owed \$362.00

Relevant Submissions

23. As per paragraph 9, the landlord has declared that, the tenant paid a security deposit of \$362.00; they are still in possession of that deposit. They are requesting to retain that damage deposit towards monies owed by the tenant for rent and late fees.

Analysis

24. The landlord's claim for losses has been successful, paragraphs 18 and 22; 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

25. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$362.00.

Issue 4: Hearing expenses reimbursed \$20.00

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

Summary of Decision

27. The tenant shall pay the \$478.00 landlord for rent, late fees and hearing expenses as follows:

- Rent..... \$745.00
- Late fees 75.00
- Hearing expenses..... 20.00
- Security deposit applied..... (362.00)
 - Total..... \$478.00

The landlord shall retain the security deposit of \$362.00.

March 18, 2022
Date

