

## Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0413-05

Jacqueline Williams  
Adjudicator

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### Introduction

1. Hearing was called at 9:42 a.m. on 04-November-2021.
2. The applicants, [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 ([REDACTED] #01) with his application stating that they served the tenant with notice of the hearing, on September 28, 2021 by email. The tenant provided the landlords with the email for communication during her tenancy. 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.
5. The landlord amended his application for dispute resolution ([REDACTED] #05), the tenant moved out around October 20, 2021, so they are no longer seeking vacant possession.

### Issues before the Tribunal

6. The landlord is seeking:
  - Rent paid in the amount of \$2,600.00
  - Late fee of \$75.00
  - Hearing expenses of \$20.00
  - Security deposit applied against monies owing \$487.50.

## 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 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 35: service of documents.

## Issue 1: Rent paid in the amount of \$2,600.00

### Relevant submissions

9. The landlord stated that he entered into a written rental agreement for a month to month term, with the tenant prior to her taking possession of the apartment on September 01, 2017. The rent is for \$650.00 a month pay own utilities. The tenant paid a security deposit of \$487.50 before moving in September 01, 2017. The landlord is still in possession of that deposit.
10. The landlord submitted a rental ledger (█#02) as well as a payment schedule (█#03) which tracks the payments from all of their units. The rental ledger shows rental arrears starting January 02, 2021 the final rent payment is on June 08, 2021 which paid for the May rent. Since that time, no rent has been paid.
11. The landlord had served the tenant with a Landlord's Notice to Terminate Early – Cause: for failure to pay rent. The termination date is September 12, 2021. The tenant did not move at that time.
12. The landlord said that they had tried to speak with the tenant but when they would go to the property she would not answer the door; he was unsure if she was avoiding them or not in the apartment at the times they knocked.
13. Around October 20, 2021, they could see through the windows that the apartment appeared to be empty and the tenant's furnishings had been removed. A conversation with the upstairs tenant confirmed that the tenant had moved.
14. The landlords regained possession at that time. The tenant did not inform them that she had left or returned the key.
15. There was some work done on the apartment to have it ready to rent again. The landlords also replaced both a glass shelf damaged in the fridge and the stove that was missing.
16. The landlord said that the apartment is almost ready to be listed.
17. He is seeking rent to the end of October 2021.

## Analysis

18. Non-payment of rent is a violation of the rental agreement made between the landlord and tenant.
19. The tenant was under an eviction notice for September 12, 2021. She did not move at this time and she did not inform the landlords when she did move.
20. The landlord has mitigated his loss by checking on the unit and determining when the tenant left. They have also started working on the unit to have it ready to rent immediately.
21. The tenant was evicted because she did not pay rent, her actions have caused loss to the landlord and the landlord has attempted to mitigate the loss, by getting the apartment ready for a new renter. I find that the tenant is responsible for the rent to the end of October 2021.

## Decision

22. The landlord's claim for rent in the amount of \$2,600.00 succeeds.

## Issue 2: Late Fees \$75.00

### Relevant Submissions

23. The landlord submitted a rent ledger (█#02) indicating that the tenant has started falling into rental arrears on January 2, 2021 and after June 08, 2021 she remained in arrears until the date she gave up possession of the property around October 20, 2021.

## Analysis

24. 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.

25. As the tenant has been arrears since June 08, 2021 the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

### **Decision**

26. The tenant shall pay late fees to the landlord in the amount of \$75.00.

### **Issue 4: Hearing Expense**

27. The landlord submitted the receipt for \$20.00 for the cost of the hearing (█#05) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

### **Issue 4: Security deposit applied against monies owing \$487.50**

#### Relevant submissions

28. The landlord is requesting of the director to retain the security deposit against the monies owed.

### **Analysis**

29. The landlord obtained a security deposit from the tenant when she took possession of the apartment, as shown in paragraph 9.
30. The landlord may request to the director to retain all or part of the security deposit, as show below in Section 14 of the *Residential Tenancies Act, 2018*:

#### **Security deposit**

(8) A security deposit is not an asset of the landlord but is held by the landlord in trust and may be used, retained or disbursed only as provided in this section.

(9) Not later than 10 days after the tenant vacates the residential premises, the landlord shall return the security deposit to the tenant unless the landlord has a claim for all or part of the security deposit.

(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.

31. It has been determined that the landlord has suffered loss of rent and they may therefore retain the security deposit towards the loss of that rent.

**Decision**

32. The landlord's application to retain the security deposit \$487.50 against monies owed succeeds.

**Summary of Decision**

33. The landlord is entitled to:

• Rent.....	\$2,600.00
• Late fees.....	75.00
• Hearing expenses....	20.00
• Less security deposit..	<u>- \$487.50</u>
<b>Total</b>	<b><u>\$2, 207.50</u></b>

34. The landlord may retain the security deposit of \$487.50.

35. The tenant shall pay the landlord \$2,207.50 for monies owed.

November 10, 2021  
Date

