

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0517-05

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:15 a.m. on 26-January-2022.
2. The applicant, [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 him 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 he has been properly served. The landlord submitted an affidavit with his application (LL#01) stating that he had served the tenant with notice of the hearing, by pre-paid registered mail on 19-November-2021. As per our policy registered mail is considered delivered after 5 days. 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

5. The landlord is seeking:
 - Rent \$4,250.00
 - Late fees \$375.00
 - Security deposit applied against monies owed \$500.00
 - Hearing expenses \$32.39

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 and Section 15: Fee for failure to pay rent.

Issue 1: Rent \$4,250.00

Relevant Submissions

8. The landlord submitted a rental agreement (LL#02), he entered into this monthly agreement with the tenant on 01-July-2017. Initially the rent was set at \$900.00 and the rent increased to \$950.00 in 2021. The rental period is from the 1st to the last day of each month with rent being due on the 1st day of the month. The tenant paid a security deposit of \$500.00 just prior to taking occupancy 01-July-2017.
9. The landlord had given the tenant a termination notice with a termination date of 30-November-2021, the landlord reports that the tenant moved out late in the day on the 30th.
10. The landlord submitted a rent ledger (LL#03) showing that in June 2021 the tenant was up to date with his rent; July he fell behind. See table below:

Rent ledger
[REDACTED]

Date	Action	Amount	total
1-Jun-21	rent due	-950.00	-950.00
6-Jun-21	rent paid	150.00	-800.00
10-Jun-21	rent paid	800.00	0.00
1-Jul-21	rent due	-950.00	-950.00
19-Jul-21	rent paid	200.00	-750.00
1-Aug-21	rent due	-950.00	-1700.00
1-Sep-21	rent due	-950.00	-2650.00
1-Oct-21	rent due	-950.00	-3600.00
1-Oct-21	rent paid	300.00	-3300.00
1-Nov-21	rent due	-950.00	-4250.00

11. The landlord is requesting payment of the full amount of rent past due totaling \$4,250.00.

Analysis

12. Non-payment of rent is a violation of the rental agreement (LL#02). I accept the landlord's documentation of his rent ledger (LL#03) and testimony as proof of rent owed.
13. The tenant shall pay the landlord \$4,250.00 in rent.

Decision

14. The landlord's claim succeeds in the amount of \$4,250.00.

Issue 2: Late fees \$375.00

Relevant Submissions

15. The landlord's rent ledger (LL#03) displays a late fee of \$75.00 for each of the months that the tenant is late in rent July, August, September, October, and November. 5 months x \$75.00 for a total of \$375.00

Analysis

16. 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.

17. As determined by the Minister, late fees are not applied at a rate of \$75.00 a month, instead it is \$5.00 for the first day and \$2.00 for each following day. Once a maximum of \$75.00 has been reached, there are no additional late fees applied. The maximum amount of \$75.00 is reached on the 36 day.

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

Decision

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

Issue 3 Security deposit applied against monies owed \$500.00

Relevant Submissions

20. As per paragraph 8, the landlord declared that, the tenant paid a security deposit of \$500.00; he is still in possession of that deposit. He is requesting to retain that damage deposit towards monies owed by the tenant for rent and late fees.

Analysis

21. The landlord's claim for losses has been successful, paragraphs 14 and 19, and he shall retain the deposit as per Section 14 of the *Residential Tenancies Act, 2018*, see below:

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

22. The landlords' claim to retain the security deposit, against monies owed, succeeds in the amount of \$500.00.

Issue 4: Hearing expenses reimbursed \$32.39

23. The landlord submitted two receipts one is for \$20.00 for the application fee (LL#06) and the other receipt is for the cost of sending registered mail \$12.39 (LL#05) for a total of \$32.39. Pursuant to policy 12.01, the landlord is entitled to reimbursement of those costs from the tenant.

Summary of Decision

24. The tenant shall pay the landlord \$3,857.39 for the following

- Rent \$4,250.00
- Late fees..... 75.00
- Hearing Expenses..... 32.39
 - Less security deposit..... (\$500.00)
 - Total..... \$3,857.39

The landlord shall retain the security deposit of \$500.00.

February 4, 2022
Date

