

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0534-05

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:15 a.m. on 25-January-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, by registered mail on 31-December-2021 and she received notification it was picked up on 06-January-2022. 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 the application to reflect the current rate of rent owed from \$260.00 to \$350.00.

Issues before the Tribunal

6. The landlord is seeking:
 - Rent \$350.00
 - Late fees \$75.00
 - Security deposit applied \$422.50

- Vacant possession of the rental premises

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 19: Notice where failure to pay rent.

Issue 1: Rent \$350.00

Relevant Submissions

9. The landlord submitted the rental agreement with the tenant (LL#02). The tenant moved into the unit on 01-August-2019. She initially signed for a term of one year to 31-July-2020. The rent is set at \$850.00, 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 each month. On 05-July-2019 the tenant paid a security deposit of \$422.50.
10. The landlord said that on 25-January-2021 they sent a lease renewal package to the tenant. The renewal is included in the evidence (LL#03). The instructions in the renewal package states that the tenant to return the renewal signed on or before 01-July-2021, if she would like to sign for another yearly term. This term would come with an increase in rent to \$870.00.
11. The landlord stated that the tenant did not respond to that renewal. She also pointed out that the instructions clearly outline, if the lease is not renewed for a yearly term, it will become a monthly agreement and rent is set at \$945.00
12. As the tenant did not respond to the renewal, the tenants rent increased to \$945.00 on 01-August-2021.
13. The rent ledger (LL#04) is as follows:

Rent ledger

Date	Action	Amount	total
	opening balance July 2021	0.00	0.00
30-Jul-21	[REDACTED] rent paid	-860.00	-860.00
1-Aug-21	rent due	945.00	85.00
1-Sep-21	rent due	945.00	1030.00
1-Sep-21	[REDACTED] rent paid	-860.00	170.00
27-Sep-21	[REDACTED] rent paid	-450.00	-280.00
1-Oct-21	rent due	945.00	665.00
1-Oct-21	[REDACTED] rent paid	-450.00	215.00

1-Nov-21	rent due		945.00	1160.00	
1-Nov-21		██████████	rent paid	-900.00	260.00
1-Dec-21	rent due		945.00	1205.00	
1-Dec-21		██████████	rent paid	-900.00	305.00
1-Jan-22	rent due based on daily rate Jan 01-25		776.75	1081.75	
1-Jan-22		██████████	rent paid	-900.00	181.75

Daily rate \$945.00 x 12 months = \$11,340.00
\$11,340.00 divided by 365 = \$31.07 a day
Jan 01 – 25: 25 days x \$31.07 = \$776.75

14. The landlord pointed out that the tenant’s rent exceeds the funding from ██████████ once the increase becomes effective and that although the tenant is responsible to pay the difference of \$45.00, she has not done that.
15. The landlord is seeking rental arrears in the amount of \$350.00.

Analysis

16. Non-payment of rent is a violation of the rental agreement. I accept the landlord’s testimony that the tenant failed to follow up with the renewal of the lease (LL#03).
17. The lease renewal that was submitted, clearly outlined the choices that the tenant could make with her lease going forward. No reply is considered choosing a monthly term at the rate of \$945.00 a month.
18. The landlord’s ledger clearly displays that the tenant’s funding from ██████████ increases to \$900.00 a month to cover the rent increase, however there is a \$45.00 balance that compounds each month.
19. As this board does not consider future rent, a daily rate was calculated for the month of January 2022.
20. The landlord’s claim for rent succeeds in the amount of \$181.75.

Decision

21. The tenant shall pay the landlord \$181.75.

Issue 2: Late fees \$75.00

Relevant Submissions

22. The landlord is requesting \$75.00 in late fees for rent arrears.

Analysis

23. 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.

24. As per the table in paragraph 13, the tenant was in a surplus position when [REDACTED] paid rent on 27-September-2021, however after rent became due on 01-October-2021, she is again in arrears on 02-October-2021. The tenant is currently in arrears for more than 3 months and therefore the landlord is entitled to a payment of the maximum fee of \$75.00 as set by the minister.

Decision

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

Issue 3: Security deposit applied against monies owed \$422.50

Relevant Submissions

26. As per paragraph 9, the landlord has declared that, the tenant paid a security deposit of \$422.50; they are still in possession of that deposit. She is requesting to retain that security deposit towards monies owed by the tenant.

Analysis

27. The landlord's claim for loss has been successful, paragraphs 20 and 24, and they 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

28. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of rent \$181.75 and late fees \$75.00 for a total of \$256.75. The landlord shall hold the remaining \$143.25 in trust for the tenant's security deposit.

Issue 4: Vacant Possession of the Rental Premises

Relevant Submissions

29. The landlord submitted a termination notice (LL#05) that they served on the tenant.
30. The termination notice is on a "landlord's notice to terminate early – cause" for non-payment of rent. The notice was signed on 30-August-2021 with a termination date of 10-September-2021. The landlord confirmed that the Building Caretaker posted this on the tenant's door on 30-August-2021 as per normal operations.
31. The landlord is seeking an Order of Vacant Possession.

Analysis

32. The termination notice served by the landlord on the tenant (LL#05) is in accordance with Section 19 of the *Residential Tenancies Act, 2018*, as follows:

Notice where failure to pay rent

19. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),

(a) where the residential premises is rented from week to week and the amount of rent payable by a tenant is overdue for 3 days or more, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 3 days after the notice is served on the tenant; and

(b) where the residential premises is

(i) rented from month to month,

(ii) rented for a fixed term, or

(iii) a site for a mobile home, and

the amount of rent payable by a tenant is overdue for 5 days or more, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 10 days after the notice is served on the tenant.

.....

33. As per the table in paragraph 13, the tenant was in rental arrears on 02-August-2021 and remained in arrears up to and including the date of termination of rental agreement on 10-September-2021. Although a portion of the rent is paid, the full amount of rent is due on the 1st day of each month as per the rental agreement (LL#02).
34. The landlord gave the tenant 10 clear days' notice and served the notice, within the guidelines of the Act, by posting the notice on the tenant's door.
35. The termination notice is valid and the tenant should have moved on or before 10-September-2021.

Decision

36. The landlord's claim for an order for vacant possession of the rental premises succeeds.
37. The tenant should have vacated the property on 10-September-2021. The tenant is to vacate the property immediately.
38. The tenant shall pay to the landlord any costs charged to the landlord, by the Office of the High Sherriff, should the landlord be required to have the Sheriff enforce the attached Order of Possession

Summary of Decision

39. The landlord is entitled to:
 - Retain \$256.75 from the tenant's security deposit for rent and late fees.
 - An order of Vacant Possession

The tenant shall:

- Move immediately
- Pay the landlord a daily rate of rent beginning 26-January-2022 of \$32.07 a day until such time as the landlord regains vacant possession of their property
- pay to the landlord any costs charged to the landlord, by the Office of the High Sherriff, should the landlord be required to have the Sheriff enforce the attached Order of Possession

January 28, 2022

Date

