

Residential Tenancies Tribunal

Application 2024-0581-NL

Michael Reddy
Adjudicator

Introduction

1. Hearing was held on 06-August-2024 at 9:05 am.
2. The applicant, [REDACTED], represented by [REDACTED] and [REDACTED], hereinafter referred to as the landlord, attended by teleconference.
3. The respondents, [REDACTED], [REDACTED], [REDACTED] and [REDACTED], hereinafter respectively referred to as tenants 1, 2, 3, and 4, attended.

Preliminary Matters

4. The landlord submitted affidavits (LL#1) and supporting documents with their application stating that all four tenants had been served with notice of the hearing via registered mail on 11-July-2024 at approximately 5:22 pm. On behalf of all tenants, tenant 3 confirmed receipt of the documents. In accordance with the *Act* this is considered 'good service'.
5. A written rental agreement (LL#2), originally a 1-year fixed term which has since converted to a month-to-month, commenced on 1-October-2021. Rent is currently set at \$965.00 per month and due on the first of each month. A security deposit of \$425.00 was paid in September-2021 and remains in the landlord's possession.
6. The landlords amended their application to include hearing expenses and amended the amount of late fees requested.
7. During the hearing it was determined that tenant 4 vacated the rental premises in October 2022 and in fact resides in another rental premises owned by the landlord. As such tenant 4 is removed from the list of respondents and will not be included on the decision and order.

Issues before the Tribunal

8. The landlord is seeking:
 - Order of Vacant Possession;
 - Rent and late fees;
 - Security deposit to be applied against payment owed; and
 - Hearing expenses.

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).
10. Also discussed and referred to in this decision are sections 14, 19, 34 and 35 of the *Act*, and Residential Tenancies Policy Manual 12-01: Costs.

Issue 1: Vacant Possession

Landlord's Position:

11. The landlord testified that rent was in arrears at the time the termination notice (LL#3) was issued on 11-June-2024 and was still in arrears on the termination date of 24-June-2024. The landlord testified that the tenants were served the termination notice on 12-June-2024, by an employee of the landlord who placed it in the door of the apartment. The landlord is seeking to have the tenants vacate the premises.
12. The landlord testified that this is the third termination notice issued to the tenants this year for non-payment of rent. The first two times notice was served the tenants paid their rent and late fees in full before the termination date.

Tenant's Position:

13. The tenants testified that they did not recall seeing the termination notice. They testified that it is difficult to get away from work to go to the landlord's office to pay the rent, but generally have the rent and late fees paid within the first week of the month. It was noted that the tenants have been struggling in the last two-to-three months, but they have paid up.

Analysis

14. The Residential Tenancies Act, 2018 states:

Notice where failure to pay rent

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

*(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.*

.....

(4) In addition to the requirements under section 34, a notice under this section shall

- a. be signed by the landlord;*
- b. state the date on which the rental agreement terminates and the tenant is required to vacate the residential premises; and*
- c. be served in accordance with section 35.*

Requirements for notices

34. A notice under this Act shall
 - (a) be in writing in the form prescribed by the minister;
 - (b) contain the name and address of the recipient;
 - (c) identify the residential premises for which the notice is given; and
 - (d) state the section of this Act under which the notice is given.
15. To receive an order for vacant possession, a landlord must have issued a valid termination notice. To be valid, a termination notice must comply with all relevant sections of the Act.
16. The landlord submitted a copy of the termination notice (LL#3). It is in writing in the form prescribed by the minister. It contains the name and address of the tenants. It identifies the residential premises it regards. It identifies itself as being issued under s. 19 of the Act. It therefore complies with s. 34.
17. LL#3 was signed by the landlord. It specifies the date on which the tenancy is to terminate and the tenants are to vacate the premises. It was served on the tenants in accordance with s. 35(2)(c) of the Act. It therefore complies with s. 19(4) of the Act.
18. Testimony confirmed that this is a month-to-month agreement with rent due on the 1st of each month. The tenants were in rent arrears more than 5-days when the termination notice was served and continued to be in rent arrears on the move out date of 24-June-2024, which is not less than 10-days after it was served. It therefore complies with s.19(1)(b) of the Act.
19. The termination notice complies with all relevant sections of the Act and is therefore valid.

Decision

20. The valid termination notice gave a move out date of 24-June-2024. The tenancy agreement ended on that date. Insofar as the tenants still have possession of the premises, they do so illegally. The landlords' application for an order of vacant possession succeeds

Issue 2: Rent and Late Fees Paid

Relevant Submission:

21. The landlord submitted a updated copy of the rental ledger (LL#4) to support their claim, as reproduced below:

6/1/2024	6/2024	C-4506273	lrnt_res - Lease Rent Residential	965.00	0.00	0.00	965.00	0.00	965.00
6/11/2024	6/2024	C-4526319	oth_late - Late Fees	23.00	0.00	0.00	23.00	0.00	988.00
6/25/2024	6/2024	C-4539555	oth_late - Late Fees	28.00	0.00	0.00	28.00	0.00	1,016.00
6/26/2024	6/2024	R-4846785	chk# Debit-495399 -	0.00	0.00	0.00	0.00	1,016.00	0.00
7/1/2024	7/2024	C-4540925	lrnt_res - Lease Rent Residential	965.00	0.00	0.00	965.00	0.00	965.00
7/9/2024	7/2024	C-4552883	oth_late - Late Fees	19.00	0.00	0.00	19.00	0.00	984.00
7/19/2024	7/2024	R-4869456	chk# chk DB#484346 -	0.00	0.00	0.00	0.00	984.00	0.00
8/1/2024	8/2024	C-4568763	lrnt_res - Lease Rent Residential	965.00	0.00	0.00	965.00	0.00	965.00

Landlord's Position:

22. The landlord testified that the original amount of rent and late fees owing for June-2024, as reflected on the application for dispute resolution had been paid by the tenants on 26-June-2024en. As well, July-2024 rent and accumulated late fees were paid in full on 19-July-2024. The landlords were able to demonstrated that as of the date of hearing, rent is owed for August-2024 and late fees in the amount of \$13.00.

Tenant's Position:

23. The tenants testified that while they originally attempted to pay their rent electronically through their bank, it would not work. They state that it is difficult to get away from work to go to the landlord's office to pay the rent, but generally have the rent and late fees paid within the first week of the month. It was noted that the tenants have been struggling in the last two-to-three months, but they have paid up rent, as well as late fees.

Analysis

24. Non-payment of rent is a violation of the rental agreement. Rent is required to be paid under a rental agreement by a tenant during the use or occupancy of a residential premises.

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

5. (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.

26. The rental ledger is amended to show a daily rate for August-2024 as this tribunal does not consider future rent beyond the date of hearing (see below).

Amended Rental Ledger 2024-0581				
Date	Action	Amount Due	Amount Paid	Total
19-July-2024	Payment	\$984.00	\$984.00	\$0
1-6 August 2024	Rent owed	\$189.84	\$0	\$189.84
Late fees	Late fees owed	\$13.00	\$0	\$202.84

Daily rate: \$965.00 * 12 months = \$11,580.00
\$11,580.00 / 366 days = \$31.64 per day

Decision

27. The landlord's claim for rent and late fees succeeds in the amount of \$202.84.

28. The tenant shall pay a daily rate of \$31.64 after 06-August-2024 until such time as the landlord regains possession of the premises.

Issue 3: Security Deposit

29. The landlord is owed moneys and is therefore entitled to apply the security deposit against the sum owed. In this case, the initial security deposit was \$425.00.

30. S. 14(7) of the *Act* says that a landlord shall credit interest to the tenant on the full amount or value of the security deposit, at the rate prescribed by the regulations, during the time the security deposit is held by the landlord. The regulations prescribe a cumulative simple interest rate of 1% annual for the year of 2024. This results in interest of \$2.55, for a total of \$427.55.

Decision

31. The landlord can apply the security deposit with interest against the sum owed.

Issue 4: Hearing expenses

Relevant Submission

32. The landlord paid a \$20.00 application fee, and registered mail postage costs of \$64.08, and are seeking reimbursement. A copy of the receipts was provided (LL#1, 5).

Analysis

33. Section 12-1 of the *Residential Tenancies Policy* states that in general, claimable costs may include the filing fee and costs associated with serving the other party with the application and evidence. As the landlord's claim has been successful, the tenant shall pay the hearing expenses.

Decision

34. The landlords claim for hearing expenses succeeds in the amount of \$84.08.

Summary of Decision

35. The landlord is granted an order of vacant possession.

36. The tenant shall pay to the landlord any costs charged to the landlord, by the Office of the High Sheriff, should the landlord be required to have the Sheriff enforce the attached Order of Possession.

37. The tenants shall continue to pay rent at a daily rate of \$31.64 per day for each day they remain in the premises past 6-August-2024.

38. The landlord may apply the security deposit and interest (\$427.55) against the sum owed for unpaid rent, late fees and hearing costs (\$ 202.24 + \$84.08 = \$ 286.32).

07 October 2024
Date

Michael J. Reddy
Residential Tenancies Office