

Residential Tenancies Tribunal

Application 2024-0598-NL

Oksana Tkachuk
Adjudicator

Introduction

1. Hearing was called at 9:03 a.m. on 13-August-2024 and was recalled on 20-September-2024 at 9:02 a.m.
2. The applicant, [REDACTED], represented by [REDACTED] and [REDACTED], hereinafter referred to as "the landlord" attended via teleconference.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as "the tenants" attended via teleconference.

Preliminary Matters

4. The landlord's representatives submitted an affidavit with their application stating that they had served the tenants with the notice of the hearing electronically via emails; [REDACTED] and [REDACTED] on 23-July-2024 (LL#1). The tenants agreed receiving notice of the hearing on that date. In accordance with the *Residential Tenancies Act, 2018* this is good service.
5. There is a written month-to-month rental agreement which commenced in February 2012. Rent is \$1432.00 per month due on the first of each month. A security deposit of \$300.00 was collected on 30-January-2012.
6. The landlord's representative amended the application to include hearing expenses in the amount of \$20.00 and to decrease the total amount tenants owe from \$3127.78 as per application to \$2359.78 including rent for the month September.

Issues before the Tribunal

7. The landlord is seeking:
 - An Order for Vacant Possession of the rented premises;
 - Rent paid \$2359.78;
 - Hearing expenses \$20.00;
 - Security deposit to be applied against monies owed \$300.00.

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
9. Also, relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 10: Statutory Conditions, Section 14: Security deposit, Section 19: Notice where failure to pay rent and Section 22: Notice where tenant's obligation is not met. Also, relevant and considered in this decision are following sections of the *Residential Tenancies Policy Manual*: Section 7-1: Notice of Termination and Section 12-1: Recovery of Costs.

Issue # 1: Vacant Possession of the Rented Premises

Relevant Submissions:

10. The landlord's representative submitted two sets of termination notices. The termination notice under Section 19: Notice where failure to pay rent is signed and dated 10-June-2024, with a termination date of 24-June-2024 (LL#2) and the termination notice under Section 22: Failure to keep premises clean and to repair damages is signed 26-June-2024, with a termination date of 2-July-2024(LL#3). Both termination notices were served electronically via emails: [REDACTED] and [REDACTED]

Landlord's Position:

11. The landlord's representative stated that rent has been in arrears since December-2022 and since January-2024 it became a real issue. The landlord's representative stated that the total amount the tenants owed when the termination notice was issued on 10-June-2024 was \$1663.78. The landlord is seeking vacant possession of rental premises.
12. The landlord's representative stated that the second termination notice was issued following the first home inspection on 11-June-2024. During that inspection they found that the rental unit was in extremely dirty condition and a request for repairs was made, which included: Cleaning the access to the boiler and electricity box, fixing the front door and cleaning the entire home before the inspection can proceed. The landlord's representative submitted a copy of the Request of repairs (LL#4). The landlord's representative submitted photographs to show the condition of the rental unit to support their claim (LL#5). The landlord's representative stated that they verbally agreed to return on 25-June-2024 to inspect the rental unit. The landlord's representative stated that on 25-June-2024 they entered the laundry room to inspect the unit and reported that the smell of the cat's urine was overwhelming and due to this odor and the uncleaned laundry room, they were unable to complete the inspection. On 26-June-2024 a termination notice was issued under Section 22, requiring the tenants to vacate by 2-July-2024, as the rental unit was remaining in uncleaned condition. The landlord's representative stated that upon further visits on 3-July and 10-July the house was to be in an unclean and messy condition. The landlord is seeking vacant possession of rental premises.

Tenant's position:

13. The tenants agreed receiving termination notices on 10-June-2024 and did not dispute that rent is in arrears.

14. The tenants agreed receiving second termination notice on 26-June-2024 and did not dispute that the rental unit was in unclean condition. The tenants stated that they cleaned the access to the boiler and electricity box and disputed that the front door needed to be fixed, claiming it was in good working condition. The tenants explained that they were in the process of cleaning the rental unit but, due to their working hours, were unable to finish the cleaning as it was required.

Analysis

15. Section 7-1 of the *Residential Tenancies Policy Manual*, Termination by More than 1 Notice states that if a termination notice is already in place and a second notice is issued by the same person whereby the termination date is later than that specified in the first notice, then the person issuing the second notice has thereby indicated that they are intending the tenancy to be extended to the date set out in the second notice. The party receiving this second notice is no longer required to abide by the termination date set out in the first notice and the termination date in the second notice is the date that the tenant is required to vacate. The person who served the 2 notices cannot have the first notice enforced. In accordance with Section 7-1 of the *Residential Tenancies Policy Manual* as stated above, I find that the latest termination notice dated 26-June-2024 will be taken into the consideration for the purpose of this decision.

16. The relevant subsections of Section 22 of the *Residential Tenancies Act, 2018* state:

Notice where tenant's obligation not met

22. (1) *Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes statutory condition 2 set out in subsection 10(1), the landlord may give the tenant notice requiring the tenant to comply with the condition.*

(2) Where a tenant contravenes statutory condition 2 set out in subsection 10(1) within 3 days after the notice under subsection (1) has been served or within a reasonable time, the landlord may give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises on a specific date not less than 5 days after the notice has been served.

17. Also relevant is subsection 2 of Section 10 of the *Residential Tenancies Act, 2018* that state:

Statutory Conditions

10. (2) *Obligation of the tenant -The tenant shall keep the residential premises clean, and shall repair damage caused by a wilful or negligent act of the tenant or a person whom the tenant permits on the residential premises.*

18. I accept that on 11-June-2024 the landlord completed a house inspection and issued a request of repairs to the tenants. The tenants have acknowledged receiving this request on that date. I accept that both parties verbally agreed that the landlord's workers will return on 25-June-2024 to inspect if the request of repairs was completed. According to the landlord's representative's testimony, they returned to inspect the unit on 25-June-2024 and the first issue under the repair request – to clear access to boiler and electrical box was completed. Regarding the front door repair, the tenants stated that there were no issues with the front door and claimed that the front door was in good working condition. I asked the landlord's representative clarification on this issue. The landlord's representative stated that there was an error in the request and the second issue should have been to fix

a back door, not the front. I asked the tenants if they understood that the back door needed to be repaired, and the tenants stated that they did not. As a result, I accept the tenant's testimony that second issue under the request for repairs was unclear and I would not expect the tenants to complete this repair. Regarding the third issue – cleaning the entire house before inspection can proceed, the landlord's representative stated that on 25-June-2024 their workers were unable to enter the rental unit fully and to finish the inspection as planned. The landlord's representative stated that upon entering the laundry room, they encountered a strong smell of cat's urine and found the room in a very unclean and messy condition, with piles of clothes and other items scattered on the floor. She stated that the odor was so bad that they were unable to continue the inspection and it was clear that the unit was not cleaned by the tenants. I asked the tenants if they have any pets and they answered that they have 2 cats and that they are aware of the odor and stated that they are working to eliminate the smell. I asked the tenants if they had completed the cleaning prior to 25-June-2024, and they admitted that they had not. Based on those reasons I accept that the unit was not cleaned. With regards to Section 22 as stated above, I find that the tenants were not fulfilling their obligation to keep the premises clean. As the tenants did not comply with Section 10 of the Act as stated above, I find that the landlord was within their rights to give a termination notice under Section 22. The termination notice was given on the 26-June-2024 to vacate on 2-July-2024 which meets the requirements not less than 5 days after the notice has been served. For this reason, I find that the termination notice is a valid notice.

19. I find that the tenants should have vacated the property by 2-July-2024.

Decision

20. The landlord's claim for an order for vacant possession of the rented premises succeeds.

Issue # 2: Rent Paid \$2359.78

Landlord's Position

21. The landlord's representative stated that the total amount the tenants owed when the termination notice was issued on 10-June-2024 was \$1663.78. The landlord's representative stated that the current amount of rent owed by the tenants is \$2359.78, including the month of September. The landlord's representative submitted a rental ledger to support their claim (LL#3).

DATE	RENT	DATE	PAYMENT	BALANCE
Balance @ November 30, 2022				0.00
December 1, 2022 PAP Returned NSF	1538.00			1,538.00
January 1, 2023 PAP Returned NSF	1042.00	January 6, 2023	1,540.00	1,040.00
February 1, 2023 PAP Returned NSF	1538.00	February 13, 2023	1,540.00	1,038.00
		February 24, 2023	1,540.00	(502.00)
March 1, 2023 PAP Returned NSF	1538.00			1,036.00
April 1, 2023 PAP Returned NSF	1538.00	April 14, 2023	1,337.22	1,236.78
		April 20, 2023	1,040.00	196.78
May 1, 2023 PAP Returned NSF	1432.00	May 5, 2023	299.00	1,329.78
		May 9, 2023	1,540.00	(210.22)
		May 29, 2023	1,400.00	(1,610.22)
June 1, 2023 PAP Returned NSF	1432.00	June 5, 2023	598.00	(776.22)
		June 30, 2023	598.00	(1,374.22)
July 1, 2023 PAP Returned NSF	1432.00	July 7, 2023	1,200.00	(1,142.22)
August 1, 2023 PAP Returned NSF	1432.00	August 25, 2023	598.00	(308.22)
September 1, 2023 PAP Returned NSF	880.00	September 5, 2023	598.00	(26.22)
October 1, 2023 PAP Returned NSF	1323.00	October 10, 2023	2,800.00	(1,503.22)
November 1, 2023 PAP Returned NSF	1036.00			(467.22)
December 1, 2023 PAP Returned NSF	1023.00	December 22, 2023	1,500.00	(944.22)
January 1, 2024 PAP Returned NSF	1029.00			84.78
February 1, 2024 PAP Returned NSF	997.00			1,081.78
March 1, 2024 PAP Returned NSF	973.00	March 20, 2024	1,200.00	854.78
		March 26, 2024	855.00	(0.22)
April 1, 2024 PAP Returned NSF	1432.00	April 30, 2024	1,200.00	231.78
May 1, 2024 PAP Returned NSF	1432.00			1,663.78
June 1, 2024 PAP Returned NSF	1432.00	June 21, 2024	700.00	2,395.78
		June 26, 2024	700.00	1,695.78
July 1, 2024 PAP Returned NSF	1432.00	July 22, 2024	1,200.00	1,927.78
		July 29, 2024	1,000.00	927.78
August 1, 2024 PAP Returned NSF	1432.00			2,359.78
September 1, 2024	1432.00	Sept 2024 PAP	1,432.00	2,359.78
TOTAL	28,775.00		26,415.22	2,359.78
			BALANCE @ September 20, 2024	2,359.78

Tenant's Position

22. The tenants did not dispute that they owe rent.

Analysis

23. 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. Payment for the month of September is amended to show a daily rate for that month as this tribunal does not consider future rent (see below). I accept the landlord's representative's testimony and I find that the tenant is responsible for outstanding rent till 20-September-2024, in the amount of \$1866.78. See amended ledger below:

Amended Rental Ledger 2024-0598-NL			
Date	Action	Amount	Total
January 1, 2024	Balance		\$84.78
February 1, 2024	Rent due	\$997.00	\$1,081.78
March 1, 2024	Rent due	\$973.00	\$2,054.78
March 20, 2024	Payment	-\$1,200.00	\$854.78
March 26, 2024	Payment	-\$855.00	-\$0.22
April 1, 2024	Rent due	\$1,432.00	\$1,431.78
April 30, 2024	Payment	-\$1,200.00	\$231.78
May 1, 2024	Rent due	\$1,432.00	\$1,663.78
June 1, 2024	Rent due	\$1,432.00	\$3,095.78
June 21, 2024	Payment	-\$700.00	\$2,395.78
June 26, 2024	Payment	-\$700.00	\$1,695.78
July 1, 2024	Rent due	\$1,432.00	\$3,127.78
July 22, 2024	Payment	-\$1,200.00	\$1,927.78
July 29, 2024	Payment	-\$1,000.00	\$927.78
August 1, 2024	Rent due	\$1,432.00	\$2,359.78
September 1, 2024	Payment	-\$1,432.00	\$927.78
September 1-20, 2024	Rent due	\$939.00	\$1,866.78

Daily rate: \$1432.00 x 12 mths = \$17184.00

\$17184.00 / 366 days = \$46.95 per day

24. The tenants shall pay a daily rate of \$46.95 per day as calculate above, until such time as the landlord regains possession of the unit.

Decision

25. The landlord's claim for rent succeeds in the amount of \$1866.78.

Issue # 3: Hearing expenses \$20.00.

Analysis

26. Section 12-1 of the *Residential Tenancies Policy* states that in general, claimable costs may include the filing fee. The landlord paid \$20.00 for the application and is seeking reimbursement. As the landlord's claim has been successful, the tenant shall pay the hearing expenses.

Decision

27. The landlord's claim for hearing expenses succeeds in the amount of \$20.00.

Issue #4: Security deposit applied against monies owed \$300.00

Analysis

28. Section 14 of the *Residential Tenancies Act, 2018* states:

Security deposit

14. (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.

(11) Where a tenant makes an application under paragraph (10)(b), the landlord has 10 days from the date the landlord is served with a copy of the tenant's application to make an application to the director under paragraph (10)(b).

29. The landlord's claim for losses has been successful as per paragraphs 25 and 27 and as such, the security deposit shall be applied against monies owed. Pursuant to the *Residential Tenancies Act, 2018* the landlord must pay interest on a security deposit to a tenant for the entire period that the landlord has had the security deposit. The interest is calculated as simple interest and is not compounded. The annual interest in 2012-2023 was 0% and is currently 1% for 2024.

Decision

30. The landlord's claim for security deposit plus interest in the amount of \$302.17 to be applied against monies owed succeeds.

Summary of Decision

31. The tenants shall pay the landlord \$1584.61 as follows:

Rent paid	\$1866.78
Hearing expenses	20.00
Less security deposit plus interest	302.17
 Total	\$1584.61

32. The tenants shall vacate the property immediately.

33. The tenants shall pay a daily rate of rent beginning 21-September-2024 of \$46.95, until such time as the landlord regains possession of the property.

34. The tenants 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.

35. The landlord will be awarded an Order of Possession.

October 4, 2024
Date

Oksana Tkachuk, Adjudicator
Residential Tenancies Office