

Residential Tenancies Tribunal

Application 2024-0692-NL

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:14 a.m. on 1-October-2024.
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 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 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 with his application stating that he had served the tenant with the notice of hearing electronically and testified that it was sent by email to: [REDACTED] on 19-September-2024 at 9:58 a.m. (LL#1). The landlord was able to show that he used a proper email address, and he was also able to show proof of sent email (LL#2). In accordance with the *Residential Tenancies Act, 2018* this is good service. 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. There was a written month to month rental agreement with the previous building owner which commenced on 1-August-2023. The applicant testified that he purchased the building on 7-December-2023 and the terms of the tenancy was transferred. Rent is \$1700.00 per month due on the first of each month. A security deposit of \$1100.00 was paid to the previous landlord on 1-August-2023 and was transferred to the applicant upon purchase of the building and is in his possession.

6. The landlord amended the application to increase *rent paid* from \$7188.00 as per the application to \$10,588.00 to include outstanding rent for September and October and also to have the *security deposit applied against monies owed*.

Issues before the Tribunal

7. The landlord is seeking:
 - An Order for vacant possession of the rented premises.
 - Rent paid \$10,588.00.

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 is the following section of the *Residential Tenancies Act, 2018*: Section 19: Notice where failure to pay rent.

Issue # 1: Vacant Possession of the Rented Premises

Relevant Submissions

10. The landlord submitted a termination notice under Section 19: Notice where failure to pay rent. The notice is signed and dated for 27-August-2024, with a termination date of 7-September-2024 (LL#3). The landlord testified that the termination notice was served electronically on 27-August at 3:02pm.

Landlord's Position

11. The landlord testified that rent has been in arrears dating back to 1-February-2024 and partial payments have been made up to the end of May. The landlord testified that there have been no payments made since that time resulting in an outstanding balance of \$10,588.00.

Analysis

12. Section 19 of 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.

13. The tenant was in rent arrears in excess of the 5 days when the termination notice was served. On the date of termination, 7-September-2024 the tenant was still in arrears. In accordance with Section 19 of the *Residential Tenancies Act, 2018* as stated above, the termination notice meets the requirements of the *Act* and is a valid notice.

14. I find that the tenant should have vacated the property on 7-September-2024.

Decision

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

Issue # 2: Rent paid \$10,588.00

Relevant Submission

16. The landlord testified that rent is outstanding in the amount of \$10,588.00 dating back to 1-February-2024. The landlord submitted a copy of the rental ledger to support the claim (LL#4). See breakdown of ledger below:

Date	Transaction Description	Amount Due	Amount Paid	Balance
Examples showing ledger entry				
Feb 01/24	February Rent	\$ 1700	\$ 1178	\$ 522
Mar 01/24	March Rent	\$ 1700	\$ 1178	\$ 522
Apr 01/24	April Rent	\$ 1700	\$ 1178	\$ 522
May 01/24	May Rent	\$ 1700	\$ 1178	\$ 522
Jun 01/24	June Rent	\$ 1700	\$ 0	\$ 1700
Jul 01/24	July Rent	\$ 1700	\$ 0	\$ 1700
Aug 01/24	August Rent	\$ 1700	\$ 0	\$ 1700
			Total	\$7,188.00

Landlord's Position

17. The landlord testified that rent is outstanding in the amount of \$10,588.00 which includes outstanding payments for September and October. The landlord is seeking rent to be paid in full.

Analysis

18. Non-payment of rent is a violation of the rental agreement. Rent is required to be paid under a rental agreement by a tenant(s) during the use or occupancy of a residential premises. The rental ledger is amended to show a daily rate for October as this tribunal does not consider future rent (see below).

Amended Rental Ledger 2024-692-NL			
Date		Amount	Total
January 31, 2024	Balance		\$0.00
February 1, 2024	Rent due	\$1,700.00	\$1,700.00
February 1, 2024	Payment	-\$1,178.00	\$522.00
March 1, 2024	Rent due	\$1,700.00	\$2,222.00
March 1, 2024	Payment	-\$1,178.00	\$1,044.00
April 1, 2024	Rent due	\$1,700.00	\$2,744.00
April 1, 2024	Payment	-\$1,178.00	\$1,566.00
May 1, 2024	Rent due	\$1,700.00	\$3,266.00
May 1, 2024	Payment	-\$1,178.00	\$2,088.00
June 1, 2024	Rent due	\$1,700.00	\$3,788.00
July 1, 2024	Rent due	\$1,700.00	\$5,488.00
August 1, 2024	Rent due	\$1,700.00	\$7,188.00
September 1, 2024	Rent due	\$1,700.00	\$8,888.00
October 1 (1 day)	Rent due	\$55.74	\$8,943.74

Daily rate: \$1700 x 12 mths = \$20400
\$20400 / 366 days = 55.74 per day

19. I find that the tenant is responsible for outstanding rent for the period of 1-February to 1-October-2024 in the amount of \$8943.74.

20. The tenant shall pay a daily rate of \$55.74 until such time as the landlord regains possession of the property.

Decision

21. The landlord's claim for *rent paid* succeeds in the amount of \$8943.74.

Issue # 3: Security deposit applied against monies owed \$1100.00

Analysis

22. 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).*

23. The landlord's claim for losses has been successful as per paragraph 21, and as such the security deposit shall be applied against monies owed. Pursuant to the *Residential Tenancies Act, 2018* landlords must pay interest on a security deposit to tenants for the entire period that the landlords have had the security deposit. The interest is calculated as simple interest and is not compounded. The annual interest for 2023 was 0% and is currently 1% for 2024.

Decision

24. The landlord's claim for security deposit to be applied against monies owed succeeds.

Summary of Decision

25. The tenant shall pay the landlord \$7835.44 as follows:

Rent paid	\$8943.74
Less security deposit & interest....	\$1108.30
Total	\$7835.44

26. The tenant shall pay a daily rate of rent beginning 2-October-2024 of \$55.74, until such time as the landlord regains possession of the property.

27. The tenant shall vacate the property immediately.

28. 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.

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

October 4, 2024
Date



Pamela Pennell, Adjudicator
Residential Tenancies Office