

Residential Tenancies Tribunal

Application 2024-0726-NL

Oksana Tkachuk
Adjudicator

Introduction

1. Hearing was called at 9:08 a.m. on 23-September-2024.
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” attended via teleconference.

Preliminary Matters

4. The landlord’s representative submitted an affidavit with their application stating that they had served the tenant with the notice of the hearing electronically via email; [REDACTED] on 5-September-2024 (LL#1). The tenant agreed to 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 on 9-June-2023. Rent is \$710.00 per month due on the first of each month. A security deposit of \$300.00 was collected on 24-May-2023.
6. The landlord amended the application to decrease the total amount the tenant owes from \$1254.33 as per application to \$770.67 including rent for the month September and to include hearing expenses of \$20.00.

Issues before the Tribunal

7. The landlord is seeking:
 - An Order for Vacant Possession of the rented premises;
 - Rent paid \$770.67;
 - 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 14: Security deposit and Section 19: Notice where failure to pay rent. Also, relevant and considered in this decision is Section 12-1 of the *Residential Tenancies Policy Manual*: Recovery of Costs.

Issue # 1: Vacant Possession of the Rented Premises

Relevant Submissions:

10. The landlord's representative submitted a copy of the termination notice under Section 19: Notice where failure to pay rent. The notice is signed and dated 18-June-2024 and was served via email; [REDACTED] on that day, with a termination date of 1-July-2024 (LL#2).

Landlord's Position:

11. The landlord's representative stated that rent has been in arrears since October-2023. The landlord's representative stated that the total amount the tenant owed when the termination notice was issued on 18-June-2024 was \$1130.67. The landlord's representative has indicated that a payment plan was established and was signed, however the tenant has not been adhering to the terms of that agreement. As a result, the landlord is seeking vacant possession of the rental property.

Tenant's position:

12. The tenant agreed receiving the termination notice on 18-June-2024 and did not dispute that rent is in arrears.

Analysis

13. 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.*

14. In accordance with Section 19 of the *Act* as stated above, when rent is overdue, the landlord has the right to give the tenant a termination notice with cause. The tenant was in rental arrears in excess of 5 days when the termination notice was served. On the date of termination, 1-July-2024 the tenant was still in arrears. The termination notice meets the requirements of the *Act* and is a valid notice.

15. I find that the tenant should have vacated the property by 1-July-2024.

Decision

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

Issue # 2: Rent Paid \$770.67

Landlord's Position

17. The landlord's representative testified that rent is outstanding in the amount of \$770.67. The landlord's representative submitted a copy of the rental ledger to support the claim (LL#3). See copy of ledger below:

DATE	RENT	DATE	PAYMENT	BALANCE
Balance @ May 31, 2023				0.00
June (Partial First Month Rent)	520.67	June 5, 2023	545.00	(24.33)
		June 30, 2023	687.00	(711.33)
July 1, 2023	710.00			(1.33)
August 1, 2023	710.00	August 3, 2023	710.00	(1.33)
September 1, 2023	710.00	September 28, 2023	710.00	(1.33)
October 1, 2023	710.00			708.67
November 1, 2023	710.00			1,418.67
December 1, 2023	710.00	December 15, 2023	350.00	1,778.67
January 1, 2024	710.00	January 18, 2024	350.00	2,138.67
		January 25, 2024	350.00	1,788.67
		Jan 2024 PAP	710.00	1,078.67
February 1, 2024 (PAP Returned NSF)	710.00	February 16, 2024	2,488.00	(699.33)
March 1, 2024 (PAP Returned NSF)	710.00	March 7, 2024	710.00	(699.33)
April 1, 2024 (PAP Returned NSF)	710.00			10.67
May 1, 2024 (PAP Returned NSF)	710.00	May 16, 2024	350.00	370.67
Jun 1, 2024 (PAP Returned NSF)	710.00			1,080.67
Jul 1, 2024 (PAP Returned NSF)	710.00	July 4, 2024	560.00	1,230.67
		July 25, 2024	450.00	780.67
Aug 1, 2024 (PAP Returned NSF)	710.00	August 5, 2024	570.00	920.67
		August 9, 2024	150.00	770.67
Sep 1, 2024 (PAP Returned NSF)	710.00	September 10, 2024	450.00	1,030.67
		September 13, 2024	260.00	770.67
TOTAL	11,170.67		10,400.00	770.67

Tenant's Position

18. The tenant did not dispute that he owes rent.

Analysis

19. 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 23-September-2024, in the amount of \$595.88. See amended ledger below:

Rental Ledger 2024-726-NL			
Date	Action	Amount	Total
April 1, 2024	Balance		\$10.67
May 1, 2024	Rent due	\$710.00	\$720.67
May 16, 2024	Payment	-\$350.00	\$370.67
June 1, 2024	Rent due	\$710.00	\$1,080.67
July 1, 2024	Rent due	\$710.00	\$1,790.67
July 4, 2024	Payment	-\$560.00	\$1,230.67
July 25, 2024	Payment	-\$450.00	\$780.67
August 1, 2024	Rent due	\$710.00	\$1,490.67
August 5, 2024	Payment	-\$570.00	\$920.67
August 9, 2024	Payment	-\$150.00	\$770.67
September 1-23, 2024	Rent due	\$535.21	\$1,305.88
September 10, 2024	Payment	-\$450.00	\$855.88
September 13, 2024	Payment	-\$260.00	\$595.88

Daily rate: $\$710.00 \times 12 \text{ mths} = \8520.00

$\$8520.00 / 366 \text{ days} = \23.27 per day

20. The tenant shall pay a daily rate of \$23.27 per day as calculate above, until such time as the landlord regains possession of the unit.

Decision

21. The landlord's claim for rent succeeds in the amount of \$595.88.

Issue # 3: Hearing expenses \$20.00.

Analysis

22. 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

23. 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

24. 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).
25. The landlord's claim for losses has been successful as per paragraphs 21 and 23 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 2023 was 0% and is currently 1% for 2024.

Decision

26. The landlord's claim for security deposit plus interest in the amount of \$302.20 to be applied against monies owed succeeds.

Summary of Decision

27. The tenant shall pay the landlord \$313.68 as follows:

Rent paid	\$595.88
Hearing expenses	20.00
Less security deposit plus interest	302.20
Total	\$313.68

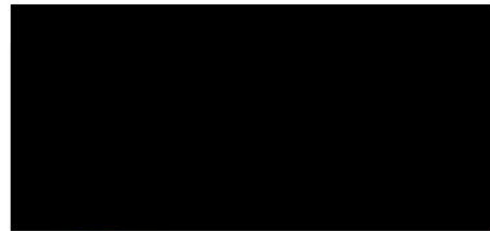
28. The tenant shall vacate the property immediately.

29. The tenant shall pay a daily rate of rent beginning 24-September-2024 of \$23.27, until such time as the landlord regains possession of the property.

30. 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.

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

October 4, 2024
Date



Oksana Tkachuk, Adjudicator
Residential Tenancies Office