

## Residential Tenancies Tribunal

Application 2024-0742-NL

Oksana Tkachuk  
Adjudicator

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### Introduction

1. Hearing was called at 1:51 p.m. on 27-November-2024.
2. The applicant, [REDACTED], represented by [REDACTED], hereinafter referred to as “the landlord”, and supportive person [REDACTED] attended via 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 have served the tenant with the notice of hearing via prepaid registered mail tracking number [REDACTED] on 6-November-2024 (LL#1). In accordance with the *Residential Tenancies Act, 2018* this is good service. As the tenant was properly served, the hearing proceeded.
5. There is a written fixed term rental agreement which commenced on 2-December-2023 until 31-December-2024. Rent is \$1040.00 per month, due on the first of each month. A security deposit in the amount of \$780.00 was paid in December-2023 and is in landlord’s possession.
6. The landlord’s representative amended the application to increase rent amount from \$2080.00 as per application to \$5200.00 including rent for the month of November and to include hearing expenses of \$52.00.

### Issues before the Tribunal

7. The landlord is seeking:
  - An Order for Vacant Possession of the rented premises;
  - Rent paid \$5200.00;
  - Late fees \$75.00;
  - Hearing expenses \$52.00;
  - Security deposit to be applied against monies owed \$780.00.

## 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 are Section 12-1 of the *Residential Tenancies Policy Manual*: Recovery of Costs, Section 2-4: Deposits, Payments and Fees and Section 12-1: 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 10-October-2024 and was served personally on that day, with a termination date of 23-October-2024 (LL#3).

### Landlord's Position

11. The landlord's representative stated that rent has been in arrears since July-2024. The landlord's representative stated that rent was not paid for 5 months since July-2024. As a result, the landlord is seeking vacant possession of the rental property.

### Tenant's Position

12. The tenant acknowledged that he received termination notice on 10-October-2024 as it was stuck to his door and agreed that rent has been in arrears since July-2024.

## 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, 23-October-2024 the tenant was still in arrears. I accept the landlord's representative and the tenant's testimony that the termination notice issued by the landlord was received by the tenant on 10-October-2024. I find that the termination notice meets the technical requirements of the *Act* and is a valid notice.

## Decision

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

## Issue # 2: Rent Paid \$5200.00; Late Fees \$75.00.

### Landlord's Position

16. The landlord's representative testified that rent is outstanding in the amount of \$5275.00 including late fees. The landlord's representative has presented a rental ledger (LL#4). See copy of the ledger below:

Trans Date	Post Month	Chg/Rec	Description	Net	Tax1	Tax2	Total	Payment	Balance
12/5/2023	12/2023	C-4350965	sec_deps - Security Deposit Charge	780.00	0.00	0.00	780.00	0.00	780.00
12/5/2023	12/2023	R-4665629	chk# Postal Money Order - 1338756849	0.00	0.00	0.00	0.00	780.00	0.00
12/13/2023	12/2023	R-4668986	chk# Debit-414933 -	0.00	0.00	0.00	0.00	1,610.32	-1,610.32
12/15/2023	12/2023	C-4353285	lmt_res - Rent for 17 days	570.32	0.00	0.00	570.32	0.00	-1,040.00
1/1/2024	1/2024	C-4366596	lmt_res - Lease Rent Residential	1,040.00	0.00	0.00	1,040.00	0.00	0.00
2/1/2024	2/2024	C-4390708	lmt_res - Lease Rent Residential	1,040.00	0.00	0.00	1,040.00	0.00	1,040.00
2/12/2024	2/2024	C-4409775	oth_late - Late Fees	25.00	0.00	0.00	25.00	0.00	1,065.00
2/29/2024	2/2024	R-4738157	chk# Cash -	0.00	0.00	0.00	0.00	650.00	415.00
3/1/2024	3/2024	C-4414482	lmt_res - Lease Rent Residential	1,040.00	0.00	0.00	1,040.00	0.00	1,455.00
3/12/2024	3/2024	C-4436723	oth_late - Late Fees	25.00	0.00	0.00	25.00	0.00	1,480.00
3/19/2024	3/2024	C-4437836	oth_late - Late Fees - MAX	25.00	0.00	0.00	25.00	0.00	1,505.00
3/25/2024	3/2024	R-4757766	chk# DD:5598107 - Payment Received - Thank You	0.00	0.00	0.00	0.00	2,600.00	-1,095.00
4/1/2024	4/2024	C-4445370	lmt_res - Lease Rent Residential	1,040.00	0.00	0.00	1,040.00	0.00	-55.00
5/1/2024	5/2024	C-4474833	lmt_res - Lease Rent Residential	1,040.00	0.00	0.00	1,040.00	0.00	985.00
5/1/2024	5/2024	R-4802830	chk# DD:5771382 - Payment Received - Thank You	0.00	0.00	0.00	0.00	500.00	485.00
5/13/2024	5/2024	C-4497270	oth_late - Late Fees	27.00	0.00	0.00	27.00	0.00	512.00
5/17/2024	5/2024	R-4811591	chk# DD:5801309 - Payment Received - Thank You	0.00	0.00	0.00	0.00	255.00	257.00
5/29/2024	5/2024	C-4520665	oth_late - Late Fees	32.00	0.00	0.00	32.00	0.00	289.00
6/1/2024	6/2024	C-4505527	lmt_res - Lease Rent Residential	1,040.00	0.00	0.00	1,040.00	0.00	1,329.00
6/3/2024	6/2024	R-4833719	chk# DD:5885314 - Payment Received - Thank You	0.00	0.00	0.00	0.00	650.00	679.00
6/17/2024	6/2024	R-4840379	chk# DD:5905550 - Payment Received - Thank You	0.00	0.00	0.00	0.00	679.00	0.00
7/1/2024	7/2024	C-4540178	lmt_res - Lease Rent Residential	1,040.00	0.00	0.00	1,040.00	0.00	1,040.00
7/9/2024	7/2024	C-4552886	oth_late - Late Fees	19.00	0.00	0.00	19.00	0.00	1,059.00
8/1/2024	8/2024	C-4568008	lmt_res - Lease Rent Residential	1,040.00	0.00	0.00	1,040.00	0.00	2,099.00
8/6/2024	8/2024	C-4577612	oth_late - Late Fees	56.00	0.00	0.00	56.00	0.00	2,155.00
9/1/2024	9/2024	C-4599245	lmt_res - Lease Rent Residential	1,040.00	0.00	0.00	1,040.00	0.00	3,195.00
10/1/2024	10/2024	C-4626085	lmt_res - Lease Rent Residential	1,040.00	0.00	0.00	1,040.00	0.00	4,235.00
11/1/2024	11/2024	C-4648972	lmt_res - Lease Rent Residential	1,040.00	0.00	0.00	1,040.00	0.00	5,275.00

### Tenant's Position

17. The tenant did not dispute that rent has not been paid since July-2024. He explained that this situation arose because he was involved in an accident and is currently waiting for his disability pension. The tenant assured that once the pension is received, all outstanding amounts will be paid in full, and no further arrears will occur.

18. 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*

19. *Residential Tenancies Policy 2-4; Deposits, Payments and Fees* states:

**Late payment fee:**

*When rent is not paid on time, a landlord may charge a late fee of \$5.00 for the first day rent is in arrears and \$2.00 for each additional day that the rent remains in arrears in any consecutive number of rental periods up to a maximum of \$75.00.*

20. 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.

21. I accept the landlord's representative and tenant's testimony that rent was not paid since July-2024. Therefore, with regards to the late fees and in accordance with Section 2-4 of the Policy as stated above, I find that that the maximum late fee of \$75.00 as prescribed by the Minister is allowed. Payment for the month of November is amended to show a daily rate for that month as this tribunal does not consider future rent.

See amended ledger below:

Amended Rental Ledger 2024-0742-NL			
Date	Action	Amount	Total
October 31, 2024	Balance		\$4,160.00
November 1-27, 2024		\$920.43	\$5,080.43
Late fees		\$75.00	\$5,155.43
			\$5,155.43

Daily rate: \$1040.00 x 12 mths = \$12480.00

\$12480.00 / 366 days = \$34.09 per day

22. The tenant shall pay a daily rate of \$34.09 per day as calculate above, commencing on 28-November-2024, until such time as the landlord regains possession of the unit.

**Decision**

23. The landlord's claim for rent and late fees succeeds in the amount of \$5155.43.

### **Issue # 3: Hearing expenses \$52.00.**

#### **Analysis**

24. Section 12-1 of the *Residential Tenancies Policy* states that in general, claimable costs may include the filing fee and costs incurred for using registered mail. The landlord paid \$20.00 for the application and \$32.00 for prepaid registered mail and is seeking reimbursement. The landlord submitted receipts to support their claim (LL#5). As the landlord's claim has been successful, the tenant shall pay the hearing expenses.

#### **Decision**

25. The landlord's claim for hearing expenses succeeds in the amount of \$52.00.

### **Issue # 4: Security deposit applied against monies owed \$780.00**

#### **Analysis**

26. 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).

27. The landlord's claim for losses has been successful as per paragraph 23 and 25 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**

28. The landlord's claim for security deposit plus interest in the amount of \$787.08 to be applied against monies owed succeeds.

## Summary of Decision

29. The tenant shall pay the landlord \$4420.35 as follows:

Rent paid and late fees .....	\$5155.43
Hearing expenses .....	52.00
Less security deposit plus interest .....	787.08

Total .....\$4420.35

30. The tenant shall vacate the property immediately.

31. The tenant shall pay a daily rate of rent beginning 28-November-2024 of \$34.09, until such time as the landlord regains possession of the property.

32. 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.

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

November 28, 2024

Date



Oksana Tkachuk, Adjudicator  
Residential Tenancies Office