

Residential Tenancies Tribunal

Application 2024-0768-NL

Oksana Tkachuk
Adjudicator

Introduction

1. Hearing was called at 9:15 a.m. on 9-October-2024.
2. The applicant, [REDACTED] represented by [REDACTED] and [REDACTED], hereinafter referred to as "the landlord" attended via teleconference.
3. The respondent, [REDACTED], hereinafter referred to as "the tenant", did not attend via teleconference.

Preliminary Matters

4. The tenant was not present or represented at the hearing and I was unable to reach him 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 the 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 he has been properly served. The landlord's representative submitted affidavit with their application stating that they had served the respondent with the notice of hearing via prepaid registered mail tracking [REDACTED] on 30-August-2024 (LL#1). The landlord's representative submitted a copy of receipt that mail was sent on that date. 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, the hearing proceeded in his absence.
5. There was a written fixed term rental agreement which commenced on 1-November-2020 and converted into a month-to-month agreement (LL#2). Rent is \$835.00 per month and due on the first of each month. A security deposit of \$405.00 was collected in the beginning of the tenancy and is in landlord's possession.
6. The landlord's representative amended the application to include hearing expenses of \$36.02. The security deposit will be applied against any monies owed.

Issues before the Tribunal

7. The landlord is seeking:

- An Order for Vacant Possession of the rented premises;
- Hearing expenses \$36.02.
- Security deposit of \$405.00 to be applied against any monies owed.

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 18: Notice of termination of rental agreement and Section 12-1 of the *Residential Tenancies Policy Manual*: Costs.

Issue #1: Vacant Possession of the Rented Premises

Landlord's Position

10. The landlord's representative testified that they gave the tenant a standard termination notice on 27-May-2024 under Section 18: Notice of termination of rental agreement to vacate the premises on 31-August-2024. The landlord's representative stated that they served the tenant with the termination notice via sticking it to the door on 28-May-2024. The landlord submitted a copy of the termination notice to support the claim (LL#3).

Analysis

11. The notice was served under Section 18 of the *Residential Tenancies Act, 2018* which states:

Notice of termination of rental agreement

18. (2) A landlord shall give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises

(a) not less than 4 weeks before the end of a rental period where the residential premises is rented from week to week;

(b) not less than 3 months before the end of a rental period where the residential premises is rented from month to month; and

(c) not less than 3 months before the end of the term where the residential premises is rented for a fixed term.

.....

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

(a) be signed by the person providing the notice;

(b) be given not later than the first day of a rental period;

(c) state the date, which shall be the last day of a rental period, on which the rental agreement terminates and the tenant intends to vacate the residential premises or the date by which the tenant is required to vacate the residential premises; and

(d) be served in accordance with section 35.

12. I accept the landlord's representative's testimony as the tenant was neither present or represented during the hearing to provide testimony to support his case. The termination notice submitted by the landlord meets the requirements of not less than 3 months before the end of the rental period after notice is served where residential premises is rented month-to-month. In accordance with the *Residential Tenancies Act*, 2018 as stated above, the termination notice meets the requirements of the *Act* and is a valid notice.

13. I find that the tenant should have vacated the property by 31-August-2024.

Issue #2: Hearing expenses \$36.02.

Relevant Submission

14. The landlord paid \$20.00 for the application fee and \$16.02 for registered mail and is seeking reimbursement. The landlord's representative submitted a copy of the receipts to support the claim (LL#4).

Analysis

15. In accordance with Section 12-1 of the *Residential Tenancies Policy Manual*: Costs, and as the landlord's claim was successful, the landlord will be awarded \$36.02 to cover hearing expenses.

Decision

16. The landlord's claim for hearing expenses succeeds in the amount of \$36.02.

Issue #3: Security deposit applied against monies owed \$405.00.

Analysis

17. 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).

18. The landlord's claim for losses has been successful as per paragraph 16 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 the 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

19. The landlord's claim for security deposit plus interest in the amount of \$408.14 to be applied against monies owed succeeds.

Summary of Decision

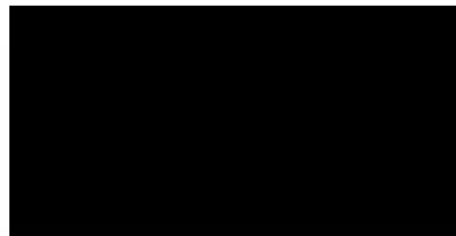
20. The landlord shall retain \$36.02 from the security deposit to cover *hearing expenses*.

21. The tenant shall vacate the property immediately.

22. 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.

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

October 16, 2024
Date



Oksana Tkachuk, Adjudicator
Residential Tenancies Office