

Residential Tenancies Tribunal

Application 2024-0809-NL

Michael Reddy
Adjudicator

Introduction

1. The hearing was held on 26 September 2024 at 1:49 PM.
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", attended via teleconference.

Preliminary Matters

4. The landlord submitted an affidavit (LL # 1) with the application stating the tenant had been served the notice of the hearing by registered mail ([REDACTED]) on 5 September 2024 at approximately 5:35 PM. The tenant did not dispute service. In accordance with the *Residential Tenancies Act*, 2018, this is considered good service.
5. The landlord amended the application during the hearing and is no longer seeking rental arrears and late fees but are seeking hearing expenses.
6. The tenant has resided in the bachelor apartment since 7 November 2022. The rental agreement is described as a written monthly agreement with rent in the amount of \$995.00 due on the 1st of each month (LL#2). There was a security deposit collected on 2 November 2022 in the amount \$705.00 and remains in the landlord's possession.
7. The tenant requested for the hearing to be postponed as he was seeking legal counsel for the hearing. As the tenant had been properly served and the tenant did not make request for postponement in the means identified in *Policy 11-002: Hearings*, of the *Residential Tenancies Program* and any further delay in these proceedings would unfairly disadvantage the landlord, this request was denied and the hearing proceeded.
8. In a proceeding under the *Residential Tenancies Act*, 2018, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. In these proceedings the standard of proof is referred

to as the balance of probabilities which means the applicant has to establish that his/her account of events are more likely than not to have happened.

Issues before the Tribunal

9. The landlord is seeking the following:

- An Order of Vacant Possession of the rental property,
- Compensation for hearing expenses, and
- The security deposit to be applied against payment owed.

Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in Sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).
11. Also relevant and referred to in this decision are Sections 19, 34 and 35 of the *Act*, along with *Policies 11-002 and 12-001 of the Residential Tenancies Program*.

Issue 1: Vacant Possession of the Rental Premises

Landlord Position

12. The landlord testified the tenant moved into the rental premises on 7 November 2022 and there is a written monthly rental agreement in place (LL # 2). The landlord stated the tenant had been previously issued 4 termination notices in April, May, June, and July 2024 for lack of payment of rent as required. The landlord issued the tenant a Termination Notice under Section 19 of the *Residential Tenancies Act, 2018*, which had personally been served to the tenant on 9 August 2024 at approximately 8:30 AM with a request for the tenant to vacate the rental premises by 21 August 2024 (LL#3).
13. The landlord testified the tenant did not hold any rental arrears on the date of the hearing (26 September 2024) and the tenant remains in the rental premises.

Tenant Position

13. The tenant did not dispute receiving more than two Termination Notices in a 12-month period. The tenant testified as to concerns with lack of rental options available to him.

Analysis

14. Section 19, Notice where failure to pay Rent, of the *Residential Tenancies Act, 2018* states:

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.*

(2) Notwithstanding subsection (1), where the tenant pays the full amount of the overdue rent, including a fee under section 15, before the date specified in the notice under paragraph (1)(a) or (b), the rental agreement is not terminated and the tenant is not required to vacate the residential premise.

(3) Subsection (2) does not apply where notice is given to a tenant under paragraph (1)(a) of (b) more than twice in a 12-month period.

(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.*

15. The tenant had been issued more than two notices in a 12-month period. 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.
16. The tenant should have vacated the property by 21 August 2024.

Decision

17. The landlord's claim for vacant possession succeeds.

Decision

18. The landlords claim for an Order for Vacant Possession succeeds.
19. The landlord is further awarded the cost associated with the certification and enforcement of the Possession Order by the High Sheriff of NL should it be required.

Issue 2: Hearing Expenses

20. The landlord offered evidence of the application fee (LL# 4) and was seeking compensation. While the tenant had been served documents via registered mail, the

landlord did not supply, along with the application receipts of the costs associated with registered mail.

21. I find the landlord's claim for hearing expense fee succeeds in the amount of \$20.00.

Decision

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

Issue 3: Security deposit applied against monies owed

Analysis

23. 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.

24. The landlord's claim for hearing expenses has been successful as per paragraph 22 and as such, the security deposit shall be applied against those 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

25. The landlord's claim for security deposit plus interest in the amount of \$710.22 to be applied against monies owed succeeds.

Summary of Decision

26. The landlord shall retain \$20.00 from the security deposit to cover *hearing expenses*.

27. The tenant shall vacate the property immediately.

28. 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.
29. The landlord will be awarded an Order of Possession.

11 October 2024
Date



Michael J. Reddy
Residential Tenancies Office