

Residential Tenancies Tribunal

Application 2024-0818-NL

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:14 a.m. on 22-November-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 and I left a voice message with the toll-free number and conference ID to enter the teleconference. I also gave a 15-minute grace period prior commencing. 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 the 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 by email to; [REDACTED] on 11-November-2024 (LL#1). The landlord submitted proof of the *sent email* and proof of the *email address* (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 is a verbal month-to-month rental agreement which commenced on 24-October-2023. Rent was originally \$1600.00 and is currently \$1200.00 per month due on the first and the fifteenth day of each month. A security deposit of \$1200.00 was paid on 24-October-2023 and is in the landlord's possession.
6. The application was amended to increase *rent paid* from \$3200.00 as per the application to \$3800.00.

Issues before the Tribunal

7. The landlord is seeking:
 - An Order for vacant possession of the rented premises.
 - Rent paid \$3800.00
 - Security deposit applied against monies owed \$1200.00

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.

Issue # 1: Vacant Possession of the Rented Premises

Relevant Submissions

10. The landlord submitted a copy of a termination notice given on a *Landlord's Notice to Terminate Early – Cause* form under Section 19: Notice where failure to pay rent. The notice is signed and dated for 26-August-2024, with a termination date of 6-September-2024 (LL#3).

Landlord's Position

11. The landlord testified that rent has been in arrears dating back to July-2024 and since that time the tenant has paid \$2200.00 leaving an outstanding balance of \$3800.00. The landlord is seeking vacant possession due to nonpayment of rent.

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, 6-September-2024 the tenant was still in arrears. I asked the landlord how he served the termination notice and he testified that he sent the notice to the tenant via text message on 26-August and he testified that she responded to his text. 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 premises on 6-September-2024.

Decision

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

Issue # 2: Rent paid \$3800.000

Relevant Submission

16. The landlord testified that rent is outstanding in the amount of \$3800.00 dating back to July 2024. The landlord submitted a copy of the rental ledger to support the claim. See breakdown of rental edger below:

Rental Ledger 2024-0818-NL			
Date	Action	Amount	Total
June 30, 2024	Balance	\$0.00	
July 1, 2024	Rent due	\$600.00	\$600.00
July 10, 2024	Payment	-\$400.00	\$200.00
July 15, 2024	Rent due	\$600.00	\$800.00
August 1, 2024	Rent due	\$600.00	\$1,400.00
August 1, 2024	Payment	-\$600.00	\$800.00
August 15, 2024	Rent due	\$600.00	\$1,400.00
September 1, 2024	Rent due	\$600.00	\$2,000.00
September 15, 2024	Rent due	\$600.00	\$2,600.00
Sepember 15, 2024	Payment	-\$1,200.00	\$1,400.00
October 1 & 15	Rent due	\$1,200.00	\$2,600.00
November 1 & 15	Rent due	\$1,200.00	\$3,800.00

Landlord's Position

17. The landlord testified that rent is outstanding in the amount of \$3800.00 dating back to July 2024 and he is seeking rent to be paid in full. The landlord testified that the tenant paid \$2200.00 in payments during the period of 10-July to 15-September leaving an outstanding balance each month. The tenant 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 by a tenant(s) during the use or occupancy of a residential premises. I find that the tenant is

responsible for outstanding rent since July 2024. The rental ledger is amended to show a daily rate for November as this tribunal does not consider future rent (see below).

Amended Ledger 2024-0818-NL			
Date	Action	Amount	Total
June 30, 2024	Balance	\$0.00	\$0.00
July 1, 2024	Rent due	\$600.00	\$600.00
July 10, 2024	Payment	-\$400.00	\$200.00
July 15, 2024	Rent due	\$600.00	\$800.00
August 1, 2024	Rent due	\$600.00	\$1,400.00
August 1, 2024	Payment	-\$600.00	\$800.00
August 15, 2024	Rent due	\$600.00	\$1,400.00
September 1, 2024	Rent due	\$600.00	\$2,000.00
September 15, 2024	Rent due	\$600.00	\$2,600.00
Sepember 15, 2024	Payment	-\$1,200.00	\$1,400.00
October 1 & 15	Rent due	\$1,200.00	\$2,600.00
November 1, 2024	Rent due	\$600.00	\$3,200.00
November 15-22, 2024	Rent due (8 days)	\$314.72	\$3,514.72

Daily rate: $\$1200 \times 12 \text{ mths} = \14400
 $\$14400 / 366 \text{ days} = \39.34 per day

19. I find that the tenant is responsible for outstanding rent for the period of 1-July to 22-November-2024 in the amount of \$3514.72.
20. The tenant shall pay a daily rate of \$39.34 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 \$3514.72.

Issue # 3: Security deposit applied against monies owed.

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 above 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 the security deposit to be applied against monies owed succeeds.

Summary of Decision

25. The tenant shall pay the landlord \$2304.00 as follows:

Rent paid \$3514.72
Less: Security deposit & Interest 1210.72

Total \$2304.00

26. The tenant shall pay a daily rate of rent beginning 23-November-2024 of \$39.34, 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.

November 27, 2024

Date



Pamela Pennell, Adjudicator
Residential Tenancies Office