

Residential Tenancies Tribunal

Application 2024-0843-NL

Oksana Tkachuk
Adjudicator

Introduction

1. Hearing was called at 2:00 p.m. on 9-October-2024.
2. The applicant 1, [REDACTED], attended by teleconference and represented applicant 2, [REDACTED], hereinafter referred to as “the landlords”.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant” did not attend.
4. The landlord called witness during the hearing – [REDACTED].

Preliminary Matters

5. 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 submitted affidavit with their application stating that they had served the tenant with the notice of the hearing electronically by email to: [REDACTED] on 16-September-2024 (LL#1). The landlord testified that they were using this email address for communication with the tenant before and submitted a proof that email 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.
6. There is a verbal month to month rental agreement that commenced on 1-June-2021. Rent is \$850.00 per month due on the first of each month. The security deposit in the amount of \$375.00 was collected on 15-May-2021 and is in the landlord’s possession.

7. The landlord amended the application to increase the amount of rent from \$850.00 as per application to \$1700.00 including month of October, to increase the amount of late fees from \$31.00 as per application to \$75.00 and to include hearing expenses of \$72.50.

Issues before the Tribunal

8. The landlord is seeking:

- Vacant possession of the Rented Premises;
- Rent paid \$1700.00 and Late fees \$75.00;
- Hearing expenses of \$72.50;
- Security deposit of \$375.00 to be applied against any monies owed.

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
10. Also, relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 14: Security deposit and Section 15: Fee for failure to pay rent, Section 24: Notice where tenant contravenes peaceful enjoyment and reasonable privacy. Also, relevant and considered in this decision are the following sections of the *Residential Tenancies Policy*: Section 2-4 Deposits, Payments and Fees, Section 7-5 Interference with peaceful enjoyment and reasonable privacy and Section 12-1 Recovery of Costs.

Issue # 1: Vacant Possession of the Rented Premises

Relevant Submissions:

11. The landlord submitted a copy of termination notice under Section 24: Notice where tenant contravenes peaceful enjoyment and reasonable privacy. The notice is signed and dated 22-August-2024 and was served electronically on that day, with a termination date of 28-August-2024 (LL#2).

Landlord's Position:

12. The landlord testified that the tenant interfered with his rights as a landlord by obstructing access to the rental unit. According to the landlord's testimony, his agent made three attempts in August to enter the unit, after giving proper notice to the tenant, as the landlord required access to conduct an appraisal of the house. The landlord stated that following these incidents he lost all communication with the tenant. Consequently, the landlord stated that he is seeking the tenant's eviction and requested to call the witness.
13. The witness, who is landlord's agent, reported that he attempted to enter the rental unit at least three times in August – in the beginning of the month, on 14-August and on 19-August. The witness stated that each time he notified the tenant about his intent to enter the unit by message at least one day prior to the intended entry date. However, on each occasion entry was impossible because while the outside door was left open by the tenant, the inside door to the unit was locked. The agent further stated that on these dates, he knocked on the doors, but nobody opened and as the tenant had been properly

notified of the planned entry, the witness believed that the access should have been provided.

Analysis

14. Section 24 of the *Residential Tenancies Act, 2018* states:

Notice where tenant contravenes peaceful enjoyment and reasonable privacy

24. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes statutory condition 7(a) set out in subsection 10(1), the landlord may give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises on a specified date not less than 5 days after the notice has been served.

(2) 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. I accept the testimony provided by the landlord and the witness, as the tenant was not present or represented during the hearing. When I asked the witness if they had a key to the rental unit, the witness confirmed that they did not, and the landlord verified that only the tenant held the key. Referring to the Section 7-5 of the Residential tenancies policy, this section states that the termination notice may be given on any unreasonable disturbance that interfere with the landlord's right to maintain and manage the property. While I accept that the landlord duly notified the tenant of the intent to enter the unit, I find it unreasonable to expect the tenant to remain in the unit awaiting the agent's arrival, as well as unreasonable to leave the unit open. I find that the landlord should have had their own key to gain entry. Consequently, although the termination notice satisfies the time frame requirements, I conclude that the landlord has failed to demonstrate the sufficient evidence that the tenant was interfering with the landlord's rights. Therefore, I find that the termination notice does not meet the requirements of the act and is not a valid notice.

Decision

16. The landlord's claim for an order for vacant possession of the rented premises does not succeed.

Issue # 2: Rent Paid \$1700.00 and Late Fees \$75.00

Landlord's Position

17. The landlord stated that the tenant did not pay rent and that the rent was outstanding since July-2024. The landlord is seeking rent to be paid in full for the outstanding rent of \$1700.00 including month of October. The landlord is also seeking the late fees in the amount of \$75.00. The landlord submitted a rental ledger to support the claim.

1-Jan-24	\$ 850.00	-\$ 850.00	\$ 0.00
1-Feb-24	\$ 850.00	-\$ 850.00	\$ 0.00
1-Mar-24	\$ 850.00	-\$ 850.00	\$ 0.00
1-Apr-24	\$ 850.00	\$ 850.00	\$ 0.00
1-May-24	\$ 850.00	\$ 850.00	\$ 0.00
1-Jun-24	\$ 850.00	\$ 850.00	\$ 0.00
1-Jul-24	\$ 850.00	\$ 0.00	\$ 850.00
1-Aug-24	\$ 850.00	\$ 1,700.00	\$ 0.00
1-Sep-24	\$ 850.00	\$ 0.00	\$ 850.00

Analysis

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. I accept the landlord's testimony, as the tenant was not present or represented to provide his own testimony. 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. I accept the landlord's testimony that rent was not paid in September and in October and I find that the tenant is responsible for outstanding rent in the amount of \$1700.00.

21. 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.

Decision

22. The landlord's claim for rent paid and late fees succeeds in the amount of \$1775.00.

Issue # 3: Hearing expenses \$72.50

Analysis

23. Section 12-1 of the *Residential Tenancies Policy* states that in general, claimable costs may include the filing fee. The landlords paid \$20.00 for the application and \$52.50 for notary service and are seeking reimbursement. The landlords submitted receipts to support their claim (LL#3). As the landlord's claim has been successful, the tenant shall pay the hearing expenses.

Decision

24. The landlord's claim for hearing expenses succeeds in the amount of \$72.50.

Issue #4: Security deposit applied against monies owed \$375.00

Analysis

25. 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).

26. As the landlord's claim for vacant possession has not been successful, the security deposit shall not be applied against any monies owed. Therefore, the landlord's claim for the security deposit will not be applied against the outstanding rent and is not successful.

Decision

27. The landlord's claim for security deposit of \$375.00 to be applied against monies owed does not succeed.

Summary of Decision

28. The landlord's claim for vacant possession does not succeed.
29. The landlord's claim for security deposit applied against monies owes does not succeed.
30. The tenant shall pay the landlord \$1847.50 as follows:

Rent and late fees	\$1775.00
Hearing expenses	\$72.50
Total	\$1847.50



October 16, 2024

Date

Oksana Tkachuk, Adjudicator
Residential Tenancies Office