

Residential Tenancies Tribunal

Application 2024-0874-NL

Oksana Tkachuk
Adjudicator

Introduction

1. Hearing was called at 9:15 a.m. on 28-October-2024.
2. The applicant, [REDACTED], represented by [REDACTED], hereinafter referred to as "the landlord", attended via 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 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 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 10-October-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 is a verbal month-to-month rental agreement which commenced on 1-August-2019. Rent is \$750.00 per month, due on the first of each month. A security deposit was paid in the amount of \$372.00 on 23-July-2019 and is in landlord's possession.
6. The landlord's representative amended the application to decrease rent amount from \$1955.00 as per application to \$694.00 and to include hearing expenses of \$20.00. The disposition of the security deposit will be addressed in this decision.

Issues before the Tribunal

7. The landlord is seeking:

- An Order for Vacant Possession of the rented premises;
- Rent paid \$694.00;
- Hearing expenses \$20.00;
- Security deposit to be applied against monies owed \$372.00.

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 is Section 12-1 of the *Residential Tenancies Policy Manual*: 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 5-August-2024 and was served via sticking it to the door on that day, with a termination date of 16-August-2024 (LL#2).

Landlord's Position:

11. The landlord's representative stated that rent has been in arrears since February-2024. The landlord's representative stated that the total amount the tenant owed when the termination notice was issued on 5-August-2024 was \$1205.00. The landlord's representative stated that rent was not paid in time and in full during months of August, September and October. As a result, the landlord is seeking vacant possession of the rental property.

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. I accept landlord's representative's testimony, as the tenant was not present or represented during the hearing to give his own testimony. 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, 16-August-2024 the tenant was still in arrears. The termination notice meets the requirements of the *Act* and is a valid notice.

14. I find that the tenant should have vacated the property by 16-August-2024.

Decision

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

Issue # 2: Rent Paid \$694.00

Landlord's Position

16. The landlord's representative testified that rent is outstanding in the amount of \$694.00. The landlord's representative has presented a rental ledger (LL#3) and has provided notes regarding the most recent payments. Based on this information, I have compiled a corresponding rental ledger. See copy of the ledger below:

Rental Ledger 2024-0874-NL			
Date	Action	Amount	Total
May 31, 2024	Balance		\$0.00
June 1, 2024	Rent due	\$750.00	\$750.00
June 5, 2024	Payment	-\$295.00	\$455.00
July 1, 2024	Rent due	\$750.00	\$1,205.00
July 29, 2024	Payment	-\$750.00	\$455.00
August 1, 2024	Rent due	\$750.00	\$1,205.00
September 1, 2024	Rent due	\$750.00	\$1,955.00
end of September	Payment	-\$1,636.00	\$319.00
October 1, 2024	Rent due	\$750.00	\$1,069.00
October 7, 2024	Payment	-\$375.00	\$694.00

Analysis

17. 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. Payment for the month of October is amended to show a daily rate for that month as this tribunal does not consider future rent (see below). I accept the landlord's representative's testimony and I find that the tenant is responsible for outstanding rent till 28-October-2024, in the amount of \$632.52. See amended ledger below:

Amended Rental Ledger 2024-0874-NL			
Date	Action	Amount	Total
May 31, 2024	Balance		\$0.00
June 1, 2024	Rent due	\$750.00	\$750.00
June 5, 2024	Payment	-\$295.00	\$455.00
July 1, 2024	Rent due	\$750.00	\$1,205.00
July 29, 2024	Payment	-\$750.00	\$455.00
August 1, 2024	Rent due	\$750.00	\$1,205.00
September 1, 2024	Rent due	\$750.00	\$1,955.00
end of September	Payment	-\$1,636.00	\$319.00
October 1-28, 2024	Rent due	\$688.52	\$1,007.52
October 7, 2024	Payment	-\$375.00	\$632.52

Daily rate: \$750.00 x 12 mths = \$9000.00
\$9000.00 / 366 days = \$24.59 per day

18. The tenant shall pay a daily rate of \$24.59 per day as calculate above, until such time as the landlord regains possession of the unit.

Decision

19. The landlord's claim for rent succeeds in the amount of \$632.52.

Issue # 3: Hearing expenses \$20.00.

Analysis

20. Section 12-1 of the *Residential Tenancies Policy* states that in general, claimable costs may include the filing fee. The landlord paid \$20.00 for the application and is seeking reimbursement. As the landlord's claim has been successful, the tenant shall pay the hearing expenses.

Decision

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

Issue # 4: Security deposit applied against monies owed \$372.00

Analysis

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 paragraphs 19 and 21 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 2019-2023 was 0% and is currently 1% for 2024.

Decision

24. The landlord's claim for security deposit plus interest in the amount of \$375.07 to be applied against monies owed succeeds.

Summary of Decision

25. The tenant shall pay the landlord \$277.45 as follows:

Rent paid	\$632.52
Hearing expenses	20.00
Less security deposit plus interest	375.07
Total	\$277.45

26. The tenant shall vacate the property immediately.

27. The tenant shall pay a daily rate of rent beginning 29-October-2024 of \$24.59, until such time as the landlord regains possession of the property.

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.

October 30, 2024
Date



Oksana Tkachuk, Adjudicator
Residential Tenancies Office