

Residential Tenancies Tribunal

Application 2024-0885-NL

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:03 a.m. on 30-October-2024.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord" attended by teleconference. [REDACTED] was also present as a support person.
3. The respondents, [REDACTED], aka [REDACTED] (respondent 1) and [REDACTED] (respondent 2), hereinafter referred to as "the tenants" attended by teleconference. [REDACTED] was also present as a support person.

Preliminary Matters

4. The landlord submitted an affidavit with her application stating that she had the tenants served personally at the residential premises on 9-October-2024 (LL#1). The tenants confirmed receipt of the document on that day and acknowledged that they were aware of the claims against them. In accordance with the *Residential Tenancies Act, 2018* this is good service.
5. There is a written term rental agreement which commenced on 15-December-2023 with the original landlords. The property was sold on 9-July-2024 at which time the current landlord took possession. Rent is \$1100.00 per month due on the first day of each month and is paid by the *Department of Children, Seniors and Social Development*, known as *Income Support* for the purpose of this decision. A security deposit of \$550.00 was paid to the original landlord on 23-December-2023 and the current landlord stated that she did not believe that the security deposit was transferred to her in the sale of the property. I disagree with the landlord as it is common *legal practice* to transfer such funds during the purchase of a property and as such, I find that the security deposit is in the possession of the current landlord.
6. The application was amended to change respondent 1's name from [REDACTED] to [REDACTED] as she confirmed that to be her legal name. The landlord also amended the application to increase *rent paid* from \$1100.00 to \$4400.00 and to include hearing expenses. Also, the disposition of the security deposit shall be dealt with in this decision.

Issues before the Tribunal

7. The landlord is seeking:
 - An Order for vacant possession of the rented premises.
 - Rent paid \$4400.00
 - Hearing expenses \$20.00
 - Security deposit applied against 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 is the following section of the *Residential Tenancies Act, 2018*: Section 19: Notice where failure to pay rent. Also, relevant and considered in this decision is the following section of the *Residential Tenancies Policy Manual*: Section 12: Recovery of costs.

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 13-September-2024, with a termination date of 25-September-2024 (LL#2).

Tenant's Position

11. The tenants did not dispute the termination notice, however respondent 1 was concerned as to the validity of the notice as her *legal name* was not stated on the notice. In addition, the tenants testified that the landlord refused to accept rent from *Income Support* and stated that the landlord wanted them to sign a new rental agreement with an increased rate of rent, which they refused to sign as they did not accept the rent increase without proper notice. The respondent's representative stated that the landlord refused to accept rent from *Income Support*, and he submitted a copy of an email to support the claim (TT#1).

Landlord's Position

12. The landlord testified that rent has been in arrears dating back to July-2024 when she purchased the property, and she stated that she never refused to accept any rent payments from *Income Support*. The landlord's representative made reference to the email entered into evidence from *Income Support* stating that the date on the email shows that the email was sent prior to 9-July when she purchased the property. The landlord is seeking vacant possession due to nonpayment of rent.

Analysis

13. 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.

14. With regards to respondent 1's name as listed on the application and the termination notice as [REDACTED], I find that respondent 1 entered into a rental agreement with the original landlord as [REDACTED] (TT#2), and as such, I accept that [REDACTED], [REDACTED] and [REDACTED] are all the same person for the purpose of this hearing.

15. I find that the email submitted by the tenants from *Income Support* stating that the landlord refused payment of rent was dated prior to when the landlord actually purchased the property. The *client services officer* from *Income Support* made reference to a conversation dated 17-June stating that the landlord has refused rent from the Department. As the landlord purchased the property on 9-July, I find that the email does not apply to the current landlord and as such, will not be taken into consideration.

16. I accept that there was conflict with regards to the signing of a new rental agreement and I find that the tenants had every right to refuse to sign a new rental agreement with an illegal rate increase, however rent is required to be paid by a tenant(s) to a landlord during the use or occupancy of a residential premises. The tenants resided at the premises for 4 months knowing that the landlord was not receiving any funds for rent. Landlords should not incur any financial loss and as the residential tenancy relationship was between the landlord and the tenants, not the landlord and *Income Support*, I find that the tenants were responsible to ensure that rent was paid when due.

17. The tenants were in rent arrears in excess of the 5 days when the termination notice was served. On the date of termination, 25-September-2024 the tenants were still in arrears. 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.

18. I find that the tenants should have vacated the premises on 25-September-2024.

Decision

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

Issue # 2: Rent paid \$4400.00

Relevant Submission

20. The landlord testified that rent is outstanding in the amount of \$4400.00 dating back to July 2024. See breakdown of ledger below:

Rental Ledger 2024-0885-NL			
Date	Action	Amount	Total
June 30, 2024	Balance		\$0.00
July 1, 2024	Rent due	\$1,100.00	\$1,100.00
August 1, 2024	Rent due	\$1,100.00	\$2,200.00
September 1, 2024	Rent due	\$1,100.00	\$3,300.00
October 1, 2024	Rent due	\$1,100.00	\$4,400.00

Landlord's and Tenants' Positions

21. The landlord testified that rent is outstanding in the amount of \$4400.00 dating back to July 2024 and she is seeking rent to be paid in full. The tenant's representative did not dispute that rent is outstanding, however he stated that there is a good reason why rent has not been paid. The tenant's representative stated that without a signed lease agreement, *Income Support* will not release payments for rent to the landlord and he stated that his clients refused to sign the new rental agreement with the landlord as it included an illegal rent increase. The tenant's representative stated that his clients have the funds and are willing to pay the outstanding rent.

Analysis

22. Non-payment of rent is a violation of the *Residential Tenancies Act, 2018*. Rent is required to be paid by a tenant(s) during the use or occupancy of a residential premises. I accept the tenant's testimony that they had good reason not to sign the new rental agreement, however that does not excuse them from paying rent to the landlord. The tenants resided in the unit for 4 months knowing that the landlord was not receiving the rent payments causing undue financial hardship on the landlord. Landlords are not responsible for where rent payments originate from, and tenants have an obligation to ensure that rent is paid in full each rental period. For those reasons, I find that the tenants are responsible for outstanding rent since July 2024. The rental ledger is amended to show a daily rate for October as this tribunal does not consider future rent (see below).

Amended Rental Ledger 2024-0885-NL			
Date	Action	Amount	Total
June 30, 2024	Balance		\$0.00
July 1, 2024	Rent due	\$1,100.00	\$1,100.00
August 1, 2024	Rent due	\$1,100.00	\$2,200.00
September 1, 2024	Rent due	\$1,100.00	\$3,300.00
October 1-30, 2024	Rent due	\$1,082.10	\$4,382.10

Daily rate: $\$1100 \times 12 \text{ mths} = \13200
 $\$13200 / 366 \text{ days} = \36.07 per day

23. I find that the tenants are responsible for outstanding rent for the period of 1-July to 30-October-2024 in the amount of \$4382.10.

24. The tenants shall pay a daily rate of \$36.07 until such time as the landlord regains possession of the property.

Decision

25. The landlord's claim for *rent paid* succeeds in the amount of \$4382.10.

Issue # 3: Hearing Expenses \$20.00

26. The landlord paid an application fee of \$20.00 to *Residential Tenancies* and submitted a copy of the receipt to support the claim (LL#3). In accordance with Section 12-1 of the *Residential Tenancies Policy Manuel*, filing fees can be claimable costs. As the landlord's claim for losses has been successful, I find that the tenants are responsible for the hearing expenses.

Decision

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

Issue # 4: Security deposit applied against monies owed.

1. 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).*
2. The landlord's claim for losses has been successful as per paragraph 25 and 27 above and as such, the security deposit shall be applied against monies owed.

Decision

3. The security deposit shall be applied against monies owed.

Summary of Decision

28. The tenants shall pay the landlord \$3847.53 as follows:

Rent paid	\$4382.10
Hearing expenses	20.00
Less: Security deposit & Interest	554.57

Total \$3847.53

29. The tenants shall pay a daily rate of rent beginning 31-October-2024 of \$36.07, until such time as the landlord regains possession of the property.

30. The tenants shall vacate the property immediately.

31. 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.

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

November 13, 2024

Date



Pamela Pennell, Adjudicator
Residential Tenancies Office