

Residential Tenancies Tribunal

Application 2024-0893-NL

Oksana Tkachuk
Adjudicator

Introduction

1. Hearing was called at 2:00 p.m. on 28-October-2024.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as “the landlords”, 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 landlords submitted an affidavit with their application stating that they have served the tenant with the notice of hearing electronically via text message to [REDACTED] on 14-October-2024 (LL#1). The landlords confirmed that they used this phone number for communication with the tenant since the beginning of the tenancy. 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 landlords, the hearing proceeded in his absence.
5. There is a verbal month-to-month rental agreement which commenced in January-2022 when the landlords purchased the property. However, the tenant was residing in the basement apartment prior to that date. Rent is \$1300.00 per month, due on the first of each month, however the tenant was making payments on a bi-weekly basis. A security deposit was not collected.
6. The landlords amended the application to increase rent amount from \$650.00 as per application to \$1300.00 including rent for the month of October and to include hearing expenses of \$20.00.

Issues before the Tribunal

7. The landlord is seeking:

- An Order for Vacant Possession of the rented premises;
- Rent paid \$1300.00;
- Hearing expenses \$20.00;

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 landlords submitted a copy of the termination notice under Section 19: Notice where failure to pay rent. The notice is signed and dated 25-September-2024 and was served via text message on that day, with a termination date of 6-October-2024 (LL#2).

Landlord's Position:

11. The landlords stated that rent has been in arrears since the tenant began making payments bi-weekly and did not pay the full rent amount on the first of each month since December-2023. The landlords stated that the total amount the tenant owed when the termination notice was issued on 25-September-2024 was \$650.00. 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 the landlords 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, 6-October-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 6-October-2024.

Decision

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

Issue # 2: Rent Paid \$1300.00

Landlord's Position

16. The landlords testified that rent is outstanding in the amount of \$1300.00. The landlords have presented a rental ledger (LL#3) and have 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 2024-0893-NL			
Date	Action	Amount	Total
April 30, 2024	Balance		\$0.00
May 1, 2024	Rent due	\$1,300.00	\$1,300.00
May 3, 2024	payment	-\$650.00	\$650.00
May 15, 2024	payment	-\$650.00	\$0.00
June 1, 2024	Rent due	\$1,300.00	\$1,300.00
June 10, 2024	payment	-\$650.00	\$650.00
June 21, 2024	payment	-\$650.00	\$0.00
July 1, 2024	Rent due	\$1,300.00	\$1,300.00
July 3, 2024	payment	-\$650.00	\$650.00
July 4, 2024	Payment	-\$650.00	\$0.00
August 1, 2024	Rent due	\$1,300.00	\$1,300.00
August 12, 2024	payment	-\$650.00	\$650.00
September 1, 2024	Rent due	\$1,300.00	\$1,950.00
September 4, 2024	payment	-\$650.00	\$1,300.00
September 10, 2024	payment	-\$650.00	\$650.00
September 28, 2024	payment	-\$650.00	\$0.00
October 1, 2024	Rent due	\$1,300.00	\$1,300.00

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 landlords

testimony and I find that the tenant is responsible for outstanding rent till 28-October-2024, in the amount of \$1193.00. See amended ledger below:

Amended Rental Ledger 2024-0893-NL			
Date	Action	Amount	Total
April 30, 2024	Balance		\$0.00
May 1, 2024	Rent due	\$1,300.00	\$1,300.00
May 3, 2024	payment	-\$650.00	\$650.00
May 15, 2024	payment	-\$650.00	\$0.00
June 1, 2024	Rent due	\$1,300.00	\$1,300.00
June 10, 2024	payment	-\$650.00	\$650.00
June 21, 2024	payment	-\$650.00	\$0.00
July 1, 2024	Rent due	\$1,300.00	\$1,300.00
July 3, 2024	payment	-\$650.00	\$650.00
July 4, 2024	Payment	-\$650.00	\$0.00
August 1, 2024	Rent due	\$1,300.00	\$1,300.00
August 12, 2024	payment	-\$650.00	\$650.00
September 1, 2024	Rent due	\$1,300.00	\$1,950.00
September 4, 2024	payment	-\$650.00	\$1,300.00
September 10, 2024	payment	-\$650.00	\$650.00
September 28, 2024	payment	-\$650.00	\$0.00
October 1-28, 2024	Rent due	\$1,193.00	\$1,193.00

Daily rate: \$1300.00 x 12 mths = \$15600.00
\$15600.00 / 366 days = \$42.62 per day

18. The tenant shall pay a daily rate of \$42.62 per day as calculate above, until such time as the landlords regain possession of the unit.

Decision

19. The landlord's claim for rent succeeds in the amount of \$1193.00.

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 landlords paid \$20.00 for the application and are 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.

Summary of Decision

22. The tenant shall pay the landlords \$1213.00 as follows:

Rent paid	\$1193.00
Hearing expenses	20.00
Total	\$1213.00


23. The tenant shall vacate the property immediately.

24. The tenant shall pay a daily rate of rent beginning 29-October-2024 of \$42.62, until such time as the landlords regain possession of the property.

25. The tenant shall pay to the landlords any costs charged to the landlords by the Office of the High Sheriff should the landlords be required to have the Sheriff enforce the attached Order of Possession.

26. The landlords will be awarded an Order of Possession.

October 30, 2024
Date



Oksana Tkachuk, Adjudicator
Residential Tenancies Office