

## Residential Tenancies Tribunal

Application 2024-0925-NL

Oksana Tkachuk  
Adjudicator

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### Introduction

1. Hearing was called at 9:15 a.m. on 13-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 reached him 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 his application stating that he had served the tenant with the notice of the hearing on 24-October-2024 via prepaid registered mail, tracking number [REDACTED] (LL#1). The landlord submitted proof of sent mail to support his claim (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, the hearing proceeded in his absence.
5. The original rental agreement was established between the landlord and the tenant, who had occupied the unit for 15 years. A few years ago, the original tenant's boyfriend, the respondent in this case, also began residing in the unit. Following the tenant's passing in January 2024, the respondent remained in the unit independently. While there is no formal rental agreement between the landlord and the respondent, his continued occupancy and rent payments have effectively established a new tenancy agreement. Rent is \$1175.00 per month due on the first of each month. Social services covers \$918.00 and \$257.00 is the tenant's portion. A security deposit was not collected.

6. The landlord amended the application to increase the total amount of rent and late fees that the tenant owes from \$626.00 as per application to \$1108.00 including rent for the month October and November 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 and late fees \$1108.00;
- 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 19: Notice where failure to pay rent and Section 15: Fee for failure to pay rent. Also, relevant and considered in this decision are the following sections of the *Residential Tenancies Policy*: Section 2-4: Deposits, Payments and Fees and Section 12-1: Recovery of Costs.

### **Issue # 1: Vacant Possession of the Rented Premises**

#### Relevant Submissions:

10. The landlord submitted a copy of the termination notice under Section 19: Notice where failure to pay rent. The notice is signed and dated 9-September-2024 and was served via sticking it to the front door of the unit on that day, with a termination date of 20-September-2024 (LL#3).

#### Landlord's Position:

11. The landlord stated that rent has been in arrears since August-2024. The landlord noted that since the tenant began residing in the unit alone, rent payments were often late, requiring frequent reminders to collect tenant's portion on time. The landlord stated that the total amount the tenant owed when the termination notice was issued on 9-September-2024 was \$626.00. The landlord stated that there were no payments made by the tenant after the termination notice was issued. 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. 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. I accept landlord's testimony, as the tenant was not present or represented during the hearing to give his own testimony. I accept that the tenant was in rental arrears in excess of 5 days when the termination notice was served. On the date of termination, 20-September-2024 the tenant was still in arrears. For those reasons 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 20-September-2024.

## **Decision**

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

### **Issue # 2: Rent Paid \$1028.00 and Late Fees \$80.00.**

#### Landlord's Position

16. The landlord stated that tenant's portion of rent was not paid for four months and that payments were consistently late since January 2024. The landlord testified that rent is outstanding in the amount of \$1028.00 for the months of August, September, October and November and he is also seeking late fees of \$80.00.

## **Analysis**

17. 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

18. *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.*

19. 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 for the months of August, September, October, and November as the tenant was not present or represented during the hearing to provide his case. Therefore, 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. Payment for the month of November 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 testimony and I find that the tenant is responsible for outstanding rent till 13-November-2024, in the amount of \$353.76 and \$75.00 for late fees. See amended ledger below:

Amended Rental Ledger 2024-0925-NL				
Date	Action	Due	Paid	Balance
July 31, 2024		Balance		\$0.00
August 1, 2024	Rent	\$1,175.00	\$918.00	\$257.00
September 1, 2024	Rent	\$1,175.00	\$918.00	\$514.00
October 1, 2024	Rent	\$1,175.00	\$918.00	\$771.00
November 1-13, 2024	Rent	\$500.76	\$918.00	\$353.76

Daily rate: \$1175.00 x 12 mths = \$14100.00  
\$14100.00 / 366 days = \$38.52 per day

20. The tenant shall pay a daily rate of \$38.52 per day from 14-November-2024 as calculate above, until such time as the landlord regains possession of the unit.

**Decision**

21. The landlord's claim for rent and late fees succeeds in the amount of \$428.76.

**Issue # 3: Hearing expenses \$20.00.**

**Analysis**

22. 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**

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

## **Summary of Decision**

24. The tenant shall pay the landlord \$448.76 as follows:

Rent paid .....	\$353.76
Late fees.....	\$75.00
Hearing expenses .....	\$20.00
 Total .....	 \$448.76

25. The tenant shall vacate the property immediately.

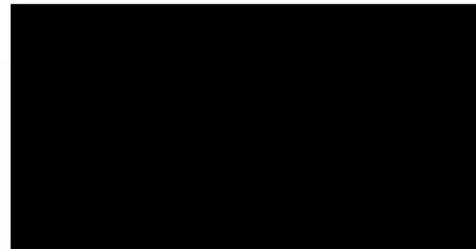
26. The tenant shall pay a daily rate of rent beginning 14-November-2024 of \$38.52, until such time as the landlord regains possession of the property.

27. 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.

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

November 27, 2024

Date



Oksana Tkachuk, Adjudicator  
Residential Tenancies Office