

## **Residential Tenancies Tribunal**

Application 2024-0948-NL

Pamela Pennell  
Adjudicator

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### **Introduction**

1. Hearing was called at 9:04 a.m. on 4-November-2024.
2. The applicant, [REDACTED], represented by [REDACTED] and [REDACTED], hereinafter referred to as "the landlord", attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as "the tenant" attended by teleconference.

### **Preliminary Matters**

4. The landlord submitted an affidavit with their application stating that they had served the tenant with the notice of hearing via prepaid registered mail ([REDACTED]) on 17-October- 2024 (LL#1). The respondent confirmed receipt of the document. In accordance with the *Residential Tenancies Act, 2018* this is good service.
5. There is a verbal month-to-month rental agreement which commenced on 1-July-2010. Rent is \$935.00 per month, due on the 1st of each month. A security deposit of \$525.00 was paid in May-2010 and is in the landlord's possession.
6. The landlord amended the application to seek hearing expenses. 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.
  - Hearing expenses \$36.00.
  - Security deposit to be applied against any 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. Relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 14: Security deposit and Section 18: Notice of termination of rental agreement. Also, relevant and considered in this decision is the following section of the *Residential Tenancies Policy*: Section 12-1: Recovery of Costs.

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

#### **Relevant Submissions**

10. The landlord submitted a copy of a termination notice issued to the tenant on 30-July-2024 under Section 18; Notice of termination of rental agreement to vacate the premises on 31-October-2024 (L#2).

#### Landlord's and Tenant's Positions

11. The landlord's representative testified that they gave the tenant a termination notice on 30-July-2024 by posting it to his door. The landlord submitted the signature of a witness who was present when the termination notice was posted to the door on 30-July at 8:30 a.m. (LL#3). The tenant disputed that he received the termination notice and stated that he was staying at his sisters at that time and had been away from the unit for 4-5 days.

#### **Analysis**

12. The notice was served under Section 18 of the *Residential Tenancies Act, 2018* which states:

#### **Notice of termination of rental agreement**

*18. (2) A landlord shall give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises*

- (a) not less than 4 weeks before the end of a rental period where the residential premises is rented from week to week;*
- (b) not less than 3 months before the end of a rental period where the residential premises is rented from month to month; and*
- (c) not less than 3 months before the end of the term where the residential premises is rented for a fixed term.*

.....

- (9) In addition to the requirements under section 34, a notice under this section shall*
  - (a) be signed by the person providing the notice;*
  - (b) be given not later than the first day of a rental period;*
  - (c) state the date, which shall be the last day of a rental period, on which the rental agreement terminates and the tenant intends to vacate the residential premises or the date by which the tenant is required to vacate the residential premises; and*
  - (d) be served in accordance with section 35.*

13. Section 35(2) of the *Residential Tenancies Act, 2018* states:

#### **Service of Documents**

35(2). A notice or other document under this *Act* other than an application under section 42 shall be served by a landlord on a tenant by ....

(c) posting it in a conspicuous place on the tenant's residential premises.

14. In accordance with Section 18 of the *Act* as stated above, the termination notice submitted by the landlord meets the requirements of not less than 3 months before the end of a rental period where the residential premises is rented month-to-month. The landlord's representative stated that the termination notice was posted on the tenant's door on 30-July-2024. The tenant disputed receiving the document, however I accept the landlord's testimony that the notice was posted in a conspicuous place on the tenant's premises, which in accordance with Section 35 of the *Act* as stated above is proper service. For those reasons, I find that the termination notice is a valid notice.

15. I find that the tenant should have vacated the premises on 31-October-2024.

## **Decision**

16. The landlord's claim for an order of vacant possession succeeds.

## **Issue # 2: Hearing expenses \$36.00**

17. Section 12-1 of the *Residential Tenancies Policy Manual* states:

### **Recovery of Costs**

In general, claimable cost may include the following:

- a. The \$20.00 filing fee
- b. The costs incurred in the preparation for a hearing
- c. The cost incurred in serving the other party with the application or with the evidence, or serving a witness with a subpoena, such as
  - Process server
  - Registered mail or Xpresspost

18. The landlord paid an application fee of \$20.00 to *Residential Tenancies* and also incurred postal fees to serve the respondent in the amount of \$16.00. The landlord provided receipts to support the claim (LL#4). In accordance with Policy 12-1 as stated above, I find that the tenant is responsible for the hearing expenses.

## **Decision**

19. The landlord's claim for hearing expenses succeeds in the amount of \$36.00.

## **Issue # 3: Security deposit applied against monies owed.**

20. 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).*

21. The landlord's claim for losses has been successful as per paragraph 20 above and as such, the security deposit shall be partially applied against monies owed.

#### **Decision**

22. The security deposit shall be partially applied against monies owed.

#### **Summary of Decision**

23. The tenant shall pay the landlord \$0.00 as follows:

|   |              |
|---|--------------|
| Hearing expenses .....                      | 36.00        |
| <b>Less: partial security deposit .....</b> | <b>36.00</b> |
| <br>Total .....                             | \$0.00       |

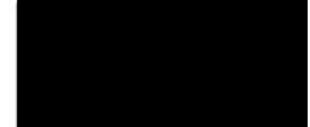
24. The tenant shall vacate the property immediately.

25. 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.

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

November 6, 2024

Date



Pamela Pennell, Adjudicator  
Residential Tenancies Office