

## Residential Tenancies Tribunal

Application 2024-0951-NL

Oksana Tkachuk  
Adjudicator

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### Introduction

1. Hearing was called at 2:00 p.m. on 5-November-2024.
2. The applicant, [REDACTED], represented by [REDACTED] [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 8-October-2024 (LL#1). The landlord's representative submitted a copy of the receipt demonstrating that mail was sent on that date(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. There was a written fixed term rental agreement which commenced on 7-March-2022 until 1-April-2023, which converted into month-to-month rental agreement. Rent is \$825.00 per month, due on the first of each month. A security deposit was paid in the amount of \$581.25 on 8-March-2022 and is in landlord's possession.
6. The landlord's representative amended the application to increase rent amount from \$428.44 as per application to \$478.44 including the month of 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 \$478.44;
- Late fees \$75.00;
- Hearing expenses \$20.00;
- Security deposit to be applied against monies owed \$581.25.

## 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 are Section 12-1 of the *Residential Tenancies Policy Manual*: Recovery of Costs, 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's representative 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 email [REDACTED] and personally delivered by courier on that day, with a termination date of 20-September-2024 (LL#3).

#### Landlord's Position:

11. The landlord's representative stated that rent has been in arrears since January-2024, when a \$50.00 rent increase took effect. The landlord's representative stated that tenant's rent is primarily covered by NL Housing and another portion is paid by Income Support. The landlord's representative stated that the total amount the tenant owed when the termination notice was issued on 9-September-2024 was \$453.44. The landlord's representative stated that rent was not paid in time and in full since January-2024. 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**

- rented from month to month,**
- 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. 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. The landlord used a different email address for the service than was stated in the rental agreement and testified that this address was provided by the tenant approximately a year ago and had been previously used for correspondence with the tenant. The landlord's representative also testified that the termination notice was hand delivered by the courier on same date. Given these admissions and the tenant's absence at the hearing, I accept the landlord's representative testimony. I find that the termination notice meets the requirements of the Act and is a valid notice.

## Decision

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

### **Issue # 2: Rent Paid \$478.44; Late Fees \$75.00.**

#### Landlord's Position

15. The landlord's representative testified that rent is outstanding in the amount of \$478.44. The landlord's representative has presented a rental ledger (LL#4) 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 2024-0951-NL			
Date	Action	Amount	Total
June 30, 2024	Balance	-\$397.56	
July 1, 2024	Rent due	\$825.00	\$427.44
July 1, 2024	Payment Income Support	-\$149.00	\$278.44
August 1, 2024	Rent due	\$825.00	\$1,103.44
August 1, 2024	Payment Income Support	-\$149.00	\$954.44
August 1, 2024	Payment NL Housing	-\$626.00	\$328.44
August 30, 2024	Payment NL Housing	-\$626.00	-\$297.56
August 30, 2024	Payment Income Support	-\$149.00	-\$446.56
September 1, 2024	Rent due	\$825.00	\$378.44
September 27, 2024	Payment NL Housing	-\$626.00	-\$247.56
October 1, 2024	Rent due	\$825.00	\$577.44
October 1, 2024	Payment Income support	-\$149.00	\$428.44
October 31, 2024	Payment NL Housing	-\$626.00	-\$197.56
November 1, 2024	Rent due	\$825.00	\$627.44
November 1, 2024	Payment income support	-\$149.00	\$478.44

16. 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

17. *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.*

18. 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.

19. I accept the landlord's testimony that rent was continuously late and not paid for in full since January-2024. 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).

20. Upon review, I find that as of 5-November-2024, there was a debit recorded on the tenant's account. See amended ledger below:

Date	Action	Amount	Total
June 30, 2024	Balance		-\$397.56
July 1, 2024	Rent due	\$825.00	\$427.44
July 1, 2024	Payment Income Support	-\$149.00	\$278.44
August 1, 2024	Rent due	\$825.00	\$1,103.44
August 1, 2024	Payment Income Support	-\$149.00	\$954.44
August 1, 2024	Payment NL Housing	-\$626.00	\$328.44
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September 27, 2024	Payment NL Housing	-\$626.00	-\$247.56
October 1, 2024	Rent due	\$825.00	\$577.44
October 1, 2024	Payment Income support	-\$149.00	\$428.44
October 31, 2024	Payment NL Housing	-\$626.00	-\$197.56
November 1-5, 2024	Rent due	\$135.20	-\$62.36
November 1, 2024	Payment income support	-\$149.00	-\$211.36
	Late Fees	\$75.00	-\$136.36

Daily rate: \$825.00 x 12 mths = \$9900.00

\$9900.00 / 366 days = \$27.04 per day

21. The tenant shall pay a daily rate of \$27.04 per day as calculate above, commencing on 6-November-2024, until such time as the landlord regains possession of the unit.

## **Decision**

22. The landlord's claim for rent and late fees does not succeed.

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

#### **Analysis**

23. 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 partially successful, the tenant shall pay the hearing expenses.

#### **Decision**

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

### **Issue # 4: Security deposit applied against monies owed \$581.25**

#### **Analysis**

25. 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).

26. The landlord's claim for losses has been successful as per paragraph 22 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 2022-2023 was 0% and is currently 1% for 2024.

#### **Decision**

27. The landlord's claim for security deposit plus interest in the amount of \$586.19 to be applied against monies owed succeeds.

## Summary of Decision

28. The tenant shall pay the landlord \$00.00 as follows:

Hearing expenses .....	20.00
Less security deposit plus interest .....	586.19
Total .....	\$0.00

29. The tenant shall vacate the property immediately.

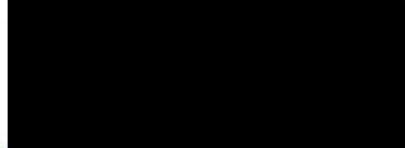
30. The tenant shall pay a daily rate of rent beginning 11-November-2024 of \$27.04, until such time as the landlord regains possession of the property.

31. 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.

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

November 22, 2024

Date

  
\_\_\_\_\_  
Oksana Tkachuk, Adjudicator  
Residential Tenancies Office