

## Residential Tenancies Tribunal

Application 2024-0993-NL

Michael Reddy  
Adjudicator

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### Introduction

1. The hearing was called at 1:53 PM on 13 November 2024 via teleconference.
2. [REDACTED] and [REDACTED], hereinafter referred to as “the landlords”, attended the hearing.
3. [REDACTED], hereinafter referred to as “the tenant”, attended the hearing.

### Preliminary Matters

4. The landlords submitted an Affidavit of Service indicating the tenants was served by electronic mail ([REDACTED]) on 22 October 2024 at 8:39 AM (L#1) and by registered mail ([REDACTED]) on 22 October 2024 at 8:45 AM. Proof of the sent email was also provided (L#2). The tenant did not dispute service. In accordance with the *Residential Tenancies Act, 2018*, this is good service.
5. There was a written one-year fixed term rental agreement that commenced on 1 November (L#3). The landlords gave notice they would be ending the fixed term and not renewing. Rent is \$1000.00 due on the 1<sup>st</sup> of each month. Income support transfers their portion a couple of weeks prior to the 1<sup>st</sup> of the month at which time the tenant is required to pay the remaining. A security deposit of \$500.00 was paid in full by 1 November 2023 and remains in the landlords’ possession.
6. In a proceeding under the *Residential Tenancies Act, 2018*, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicant must establish that his/her account of events are more likely than not to have happened.

### Issues before the Tribunal

7. The landlord is seeking:

- An order for vacant possession of the rental premises;
- Rental arrears;
- Security deposit to be applied against payment owed; and,
- Hearing expenses

## Legislation and Policy

11. The jurisdiction of the Director of Residential Tenancies is outlined in Sections 46 and 47 of the *Residential Tenancies Act, 2018 (the Act)*.
12. Also discussed and referred to in this decision are Sections 14, 18, 19, 34 and 35 of *the Act*, as well as Residential Tenancies Program Policy 7-001

## Issue 1: Vacant Possession of the Rental Premises

13. The landlords testified the tenant took occupancy on 1 November 2023 and there was a fixed term rental agreement for twelve months. During the tenancy, the landlords stated the tenant had been issued termination notices under Section 19 of the *Act* on both 8 December 2023 and 7 January 2024. On both occasions, the tenant paid the rental arrears owing, invalidating the termination notice. The tenant does not dispute receipt of those two notices.
14. On 7 May 2024, the landlords issued a termination notice under Section 18 of the *Act*, with a request for the tenant to vacate by 31 October 2024 (L#4). This notice was provided to the tenant electronically and by taping it to his door. The tenant did not dispute receiving this notice.
15. On 7 October 2024, the landlords issued a termination notice under Section 19 of the *Act*, with a request for the tenant to vacate by 17 October 2024 (L#7). This notice was provided to the tenant electronically and by taping it to his door (L#6). The tenant did not dispute receiving this notice electronically.

## Analysis

16. Upon review of the Section 19 Notice to Terminate Early- Cause issued on 7 October 2024 (L#6), the following requires consideration. Section 19, Notice where failure to pay Rent, of the *Residential Tenancies Act, 2018* states:

**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.*

17. This notice was personally served on 7 October 2024, with a request for the tenant to vacate by 17 October 2024. This timeline is not less than 10 days as indicated above. This notice is not a valid notice.
18. The termination notice served on 7 May 2024, with a request for the tenant to vacate on 31 October 2024, was served under Section 18 of the *Act* 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

.....

(c) not less than 3 months before the end of the term where the residential premises is rented for a fixed term.

19. As the date of termination identified on the notice is not less than 3 months before the end of the term and the date the tenant is required to move out, the termination notice follows the requirements of Section 18 (2)(c).
20. Section 18 (9) and 34 identify the technical requirements of the termination notice.

**Section 18 (9)**

*In addition to the requirements under Section 34, a notice under this section shall*

- (a) be signed by the landlord;*
- (b) be given not later than the first day of the rental period;*
- (c) state the date on which the rental agreement terminates and the tenant is required to vacate the residential premises; and*
- (d) be served in accordance with section 35.*

**Section 34**

*A notice under this Act shall*

- (a) be in writing in the form prescribed by the minister;*
- (b) contain the name and address of the recipient;*
- (c) identify the residential premises for which the notice is given; and*
- (d) state the section of this Act under which the notice is given.*

21. On examination of the termination notice, I find all these criteria have been met. Further, as identified above, the landlords testified that the termination notice was served by posting the notice in a conspicuous place and electronically (L#4) which are both permitted methods of service identified under Section 35.

22. According to the reasons identified above, I find that the section 18 termination notice issued by landlord to be proper and valid.

### **Decision**

23. The landlords claim for an Order for Vacant Possession succeeds.
24. The landlords are further awarded the cost associated with the certification and enforcement of the Possession Order by the High Sheriff of NL.

### **Issue 2: Rental Arrears**

25. The landlords are seeking rental arrears of \$390.38. The landlords testified the rental agreement began on 1 November 2023, at which time \$1000.00 rent was due on the 1<sup>st</sup> of each month. The landlords stated they received a portion of the monthly rental payments from the provincial government (income support) and these payments are provided a couple of weeks in advance of the 1<sup>st</sup> of each month.(L#8). The tenant is required to pay the remainder on the 1<sup>st</sup> of each month.
26. The landlords testified for October 2024 rent, they received \$609.62 from the Department of Immigration, Population Growth and Skills Development (L#9) on 11 September 2024 and the tenant did not pay the remainder of rent for October 2024 of \$390.38.
27. The tenant did not dispute there were rental arrears. He testified he was never informed by the Department of Immigration, Population Growth and Skills Development there would be a changed payment schedule over two payments for each month. He stated on 16 October 2024, the landlords were paid \$775.52 however did not accept the payment.
28. The landlords testified as the tenant was asked to vacate the rental premises prior to 1 November 2024, they did not accept the initial rental payment for November 2024 of \$775.52 on 16 October 2024 (L#10).

### **Analysis**

29. 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.
30. The tenant owes \$390.38 rental arrears for October 2024.
31. As the tenant remains in the rental premises on the date of the hearing (13 November 2024), rent for November 2024 is calculated at a daily rate as follows: \$1000.00 X 12 months = \$12000.00 ÷ 366 days = \$32.79 per day X 13 days = \$426.27. Rent owing for November 2024 is \$426.27.

## Decision

32. The landlords claim for rental arrears succeeds in the amount of \$816.65.
33. Additionally, the tenant is responsible for a daily rent in the amount of \$32.79 beginning on 14 November 2024 and continuing until the day the landlords obtain vacant possession of the rented premises.

## Issue 3: Security Deposit

34. Section 14(7) of the *Act*, says that a landlords shall credit interest to the tenant on the full amount or value of the security deposit, at the rate prescribed by regulations, during the time the security deposit is held by the landlords. The regulations prescribe a cumulative simple interest rate of 1% annual for the year of 2024. This results in interest of \$4.34, for a total of \$504.34.

## Decision

35. The landlords can apply the security deposit with interest against the sum owed.

## Issue 4: Hearing Expenses

36. The landlords paid a \$20.00 application fee and is seeking reimbursement. A copy of the receipt was provided (L#11).

## Decision

37. The landlords claim from hearing expenses succeeds in the amount of \$20.00.

## Summary of Decision

38. The landlords are entitled to the following:
- A payment of **\$332.31**, determined as follows:

• Rental Arrears.....	\$816.65
• Hearing expenses.....	\$20.00
• <b>Less: Security deposit + interest.....</b>	<b>\$504.34</b>
• Total.....	<b><u>\$332.31</u></b>
  - An Order of Vacant Possession of the rented premises.

- A payment of a daily rate in the amount of **\$32.79**, beginning on 14 November 2024 and continuing to the date the landlords obtain vacant possession of the rental premises.
- The tenant shall also 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 Order of Possession.

10 December 2024  
Date



Michael J. Reddy  
Residential Tenancies Office