

Residential Tenancies Tribunal

Application 2024-1007-NL

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:48 p.m. on 27-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 pre-paid registered mail ([REDACTED]) on 1-November-2024 (LL#1). The tenant confirmed receipt of the document. In accordance with the *Residential Tenancies Act, 2018* this is good service.
5. There is a written month-to-month rental agreement which commenced on 27-September-2002. Rent is \$538.00 per month due on the first day of each month. A security deposit was never paid.
6. The application was amended to decrease *rent paid* from \$15,588.44 as per the application to \$14,950.44 and to include hearing expenses.

Issues before the Tribunal

7. The landlord is seeking:
 - An Order for vacant possession of the rented premises.
 - Rent paid \$14,950.44
 - 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 is the following section of the *Residential Tenancies Act, 2018*: Section 19: Notice where failure to pay rent. 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 Submission

10. The landlord submitted a copy of a termination notice given to the tenant under Section 19: Notice where failure to pay rent. The notice is signed and dated for 1-October-2024, with a termination date of 25-October-2024. The landlord submitted a copy of the notice to support the claim (LL#2).

Landlord's Position

11. The landlord testified that rent has been in arrears dating back to the commencement of the tenancy and a payment of \$588.00 was made on 22-November, leaving an outstanding balance of \$14,950.44. The landlord is seeking vacant possession due to nonpayment of rent.

Tenant's Position

12. The tenant did not dispute that there is an outstanding balance on the account, however she disputed the amount as she stated that she was unable to provide the landlord with updated tax returns regarding her income which would have decreased the amount of rent owed to the landlord.

Analysis

13. 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.

14. The tenant was in rent arrears in excess of the 5 days when the termination notice was served. On the date of termination, 25-October-2024 the tenant was still in arrears. I asked the landlord how they served the termination notice and she responded stating that the termination notice was sent to the tenant via pre-paid registered mail (██████████). The landlord submitted a copy of the *Canada Post* tracking to support the claim (LL#3). In accordance with Section 19 of the *Residential Tenancies Act, 2018* as stated above, the termination notice meets the requirements of the *Act* and is a valid notice.

15. I find that the tenant should have vacated the premises on 25-October-2024.

Decision

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

Issue # 2: Rent paid \$14,950.44

Relevant Submission

17. The landlord's representative testified that rent is outstanding in the amount of \$14,950.44 dating back to the beginning of the tenancy. The landlord submitted a copy of the rental ledger to support the claim (LL#4). See breakdown of partial rental ledger below:

Rental Ledger 2024-1007-NL			
Date	Action	Amount	Total
May 31, 2024	Balance		\$13,098.44
June 1, 2024	Rent due	\$538.00	\$13,636.44
July 1, 2024	Rent due	\$538.00	\$14,174.44
August 1, 2024	Rent due	\$538.00	\$14,712.44
September 1, 2024	Rent due	\$538.00	\$15,250.44
September 1, 2024	Payment	-\$200.00	\$15,050.44
October 1, 2024	Rent due	\$538.00	\$15,588.44
October 1, 2024	Payment	-\$588.00	\$15,000.44
November 1, 2024	Rent due	\$538.00	\$15,538.44
November 22, 2024	Payment	-\$588.00	\$14,950.44

Landlord's Position

18. The landlord's representative testified that rent is outstanding in the amount of \$14,950.44 after a payment of \$588.00 was made on 22-November-2024. The landlord is seeking rent to be paid in full.

Tenant's Position

19. The tenant disputed the outstanding amount of rent owed as claimed by the landlord as she stated that she has not been able to provide the landlord with tax returns that would show her income for the last few years. The tenant stated that she has been unemployed

for the past 5 years and she was in receipt of employment insurance for 1.5 years which would have reduced the amount of rent she was required to pay.

Analysis

20. I accept the tenant's testimony that the outstanding rental amount may be different if she had provided the landlord with her tax returns, however she failed to do so and as a result the landlord charged rent based on the information that they had. I find that the onus was on the tenant to provide the landlord with the proper documentation to adjust the rental amounts if necessary and as such, I accept the rental ledger entered into evidence.
21. Non-payment of rent is a violation of the rental agreement. Rent is required to be paid by a tenant(s) during the use or occupancy of a residential premises. I find that the tenant is responsible for outstanding rent dating back to the commencement of the tenancy. The rental ledger is amended to show a daily rate for November as this tribunal does not consider future rent (see below).

Amended Ledger 2024-1007-NL			
Date	Action	Amount	Total
May 31, 2024	Balance		\$13,098.44
June 1, 2024	Rent due	\$538.00	\$13,636.44
July 1, 2024	Rent due	\$538.00	\$14,174.44
August 1, 2024	Rent due	\$538.00	\$14,712.44
September 1, 2024	Rent due	\$538.00	\$15,250.44
September 1, 2024	Payment	-\$200.00	\$15,050.44
October 1, 2024	Rent due	\$538.00	\$15,588.44
October 1, 2024	Payment	-\$588.00	\$15,000.44
November 1-27, 2024	Rent due	\$476.28	\$15,476.72
November 22, 2024	Payment	-\$588.00	\$14,888.72

Daily rate: $\$538 \times 12 \text{ mths} = \6456
 $\$6456 / 366 \text{ days} = \17.64 per day

22. I find that the tenant is responsible for outstanding rent up to 27-November-2024 in the amount of \$14,888.72.
23. The tenant shall pay a daily rate of \$17.64 until such time as the landlord regains possession of the property.

Decision

24. The landlord's claim for *rent paid* succeeds in the amount of \$14,888.72.

Issue # 3: Hearing Expenses \$20.00

25. The landlord paid an application fee of \$20.00 to *Residential Tenancies* and they submitted a copy of the receipt to support the claim (LL#5). In accordance with Section 12-1 of the *Residential Tenancies Policy*, filing fees are allowable costs. As the landlord has been successful in his claim for losses, the tenant is responsible for the hearing expenses.

Decision

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

Summary of Decision

27. The tenant shall pay the landlord \$14,908.72 as follows:

Rent paid	\$14888.72
Hearing expenses	20.00
 Total	 \$14908.72

28. The tenant shall pay a daily rate of rent beginning 28-November-2024 of \$17.64, until such time as the landlord regains possession of the property.

29. The tenant shall vacate the property immediately.

30. 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.

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

December 11, 2024
Date



Pamela Pennell, Adjudicator
Residential Tenancies Office