

Residential Tenancies Tribunal

Application 2024-1048-NL

Michael Reddy
Adjudicator

Introduction

1. Hearing was held at 9:02 AM on 12 December 2024 via teleconference.
2. The applicant, [REDACTED], represented by [REDACTED] and [REDACTED], hereinafter referred to as “the landlords”, attended.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant”, attended.

Preliminary Matters

4. The landlords submitted an affidavit (L#1) with the application stating the tenant had been personally served the notice of the hearing on 22 November 2024 at approximately 9:30 AM. The tenant did not dispute this service. In accordance with the *Residential Tenancies Act*, 2018, this is considered good service.
5. A fixed term agreement (L#2) commenced on 1 January 2019, which has since evolved into a month-to-month rental agreement, with rent currently at \$1150.00 (utilities included) due on the 1st of each month. There was a security deposit of \$432.50 collected on the tenancy prior to occupancy.
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 has to establish that his/her account of events are more likely than not to have happened.
7. The landlord amended their application to include compensation for hearing expenses. The disposition of the security deposit shall be dealt with in this decision.

Issues before the Tribunal

8. The landlords are seeking:
 - an order of vacant possession of the rental property; and
 - compensation for hearing expenses of \$20.00.

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in Sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).
10. Also relevant and referred to in this decision are Sections 18, 34 and 35 of the *Act*.

Issue 1: Vacant Possession of the Rental Premises

11. The landlords testified on 2 August 2024; the tenant was personally served with a Notice of Termination of the rental agreement under Section 18 of the *Act* with a request for the tenant to vacate the rental premises on 30 November 2024 (L#3). On the date of the hearing (12 December 2024), the tenant remains in the rental premises.
12. The tenant testified the termination notice was placed under the door of the rental premises on 2 August 2024. She stated that she felt she received the notice of termination because of her adult daughter's behaviour, which had nothing to do with her as she did not let her daughter into the building.

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

.....

(b) not less than 3 months before the end of a rental period where the residential premises is rented from month to month; and

13. On examination of the termination notice submitted into evidence (L#3), I find that the notice served on 2 August 2024 had a termination date of 30 November 2024. As the date of termination identified on the notice is not less than 3 months before the end of the rental period and the date the tenant is required to move out, the termination notice follows the requirements of Section 18 (2)(b).
14. 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.*

15. On examination of the termination notice, I find all these criteria have been met. Further, as identified above, the landlord testified that the termination notice was served personally. The tenant disputed this and stated that the termination notice was slid under the door of her rental unit. Both methods are identified under Section 35 as a valid and permissible methods of service.
16. According to the reasons identified above, I find that the termination notice issued by landlord to be proper and valid. The tenant should have vacated the premises on 30 November 2024.

Decision

17. The landlords claim for an order for vacant possession succeeds.
18. 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 order of possession.

Issue 2: Hearing Expenses

19. The landlords claim \$20.00 hearing expenses. Along with their application, they supplied a copy of the hearing receipt (L#4). As the application succeeds, in accordance with Residential Tenancies Program Policy 12-001, the landlord claim for hearing expenses succeeds in the amount of \$20.00.

Decision

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

Issue 3: Security Deposit

21. 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).*

22. 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

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

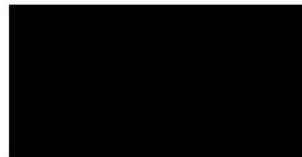
Summary of Decision

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

| | |
|--------------------------------------|---------|
| Hearing expenses | \$20.00 |
| Less: partial security deposit | \$20.00 |
| Total | \$ 0.00 |

25. The tenant shall vacate the property immediately.
26. 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.
27. The landlord will be awarded an order of possession.

17 December 2024
Date



Michael Reddy, Adjudicator
Residential Tenancies Office