

Residential Tenancies Tribunal

Application 2024-1066-NL

Oksana Tkachuk
Adjudicator

Introduction

1. Hearing was called at 9:15 a.m. on 17-December-2024.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as “the landlords”, attended by 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 landlords submitted affidavit with their application stating that they had served the tenant with the notice of the hearing personally on 2-December-2024 (LL#1). 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 landlords, the hearing proceeded in his absence.
5. There is a written month-to-month rental agreement that commenced on 1-June-2020. Rent is \$850.00 per month due on the first of each month. The security deposit in the amount of \$375.00 was collected on 19-May-2020 and is in the landlord’s possession.
6. The landlords amended their application to include hearing expenses of \$20.00.
7. The disposition of security deposit will be dealt in this decision.

Issues before the Tribunal

8. The landlords are seeking:
 - An Order for Vacant Possession of the rented premises;

- Hearing expenses \$20.00
- Security deposit to be applied against monies owed \$375.00.

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*.
10. 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 the following sections of the *Residential Tenancies Policy*: Section 7-1: Notice of Termination, and Section 12-1: Recovery of Costs.

Issue # 1: Vacant Possession of the Rented Premises

Relevant Submissions

11. The landlords submitted a copy of the termination notice issued to the tenant under two sections - Section 19: Notice where failure to pay rent and Section 22: Notice where failure to keep premises clean and to repair damage. The notice is signed and dated 12-November-2024 and was served electronically via messenger and by sticking it to the front door on that day, with a termination date of 23-November-2024 (LL#2).

Landlord's Position

12. The landlords stated that the tenant did not pay rent for November and December, and that when they issued a termination notice on 12-November, November rent was not paid. The landlords testified that on 4-September they conducted an inspection and discovered that the unit was filled with the tenant's belongings, making the unit inaccessible. The landlords indicated that the tenant's boxes were stacked up to the ceiling in one of the bedrooms, and that the bathtub was full of his items, and the amount of stuff was excessive. Following the inspection, the landlords sent a request to the tenant to remove his belongings to allow for easier access to the unit. As a result, the landlords are seeking vacant possession of the rental property.

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

- rented from *month to month*,**
- rented for a fixed term, or**
- 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. I accept the landlord's testimony, as the tenant was not present or represented during the hearing to provide his position. In accordance with Section 19 of the *Act* as stated above, when rent is overdue, the landlords have 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, 23-November-2024 the tenant was still in arrears. According to the Section 7-1 of the *Policy*, when a termination notice is issued by more than one section of the *Act*, the validity of the notice only requires proof under one of the applicable sections. In this case, the termination notice issued under the Section 19 meets the technical requirements of the *Act* and is therefore considered valid. Consequently, the termination notice issued under Section 22 will not be considered for the purpose of this decision.

Decision

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

Issue # 2: Hearing expenses \$20.00

Analysis

16. Section 12-1 of the *Residential Tenancies Policy* states that in general, claimable costs may include the filing fee. The landlords paid \$20.00 for the application and are seeking reimbursement. The landlords submitted receipt for application fee (LL#3). As the landlord's claim has been successful, they will be awarded compensation for the hearing expenses in the amount of \$20.00.

Decision

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

Issue #3: Security deposit applied against monies owed \$375.00

Analysis

18. 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).

19. As the landlord's claim has been successful as per paragraphs 15 and 17, the security deposit shall be applied against any monies owed. Therefore, the security deposit will be applied against the outstanding losses. 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 interest in 2020-2023 was 0% and the annual interest in 2024 is 1%.

Decision

20. The security deposit plus interest to be applied against monies owed.

Summary of Decision

21. The tenant shall pay the landlords \$0.00 as follows:

Hearing expenses	\$20.00
Less security deposit plus interest	\$378.61
Total	\$0.00

22. The tenant shall vacate the property immediately.

23. The tenant shall 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 attached Order of Possession.

24. The landlords will be awarded an Order of Possession

December 23, 2024

Date



Oksana Tkachuk, Adjudicator
Residential Tenancies Office