

Residential Tenancies Tribunal

Application 2024-1087-NL

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:08 a.m. on 14-January-2025.
2. The applicant, [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 her application stating that she had served the tenant with the notice of hearing personally at the residential premises on 31-December-2024 (LL#1). The tenant confirmed receipt of the document on that date. In accordance with the *Residential Tenancies Act, 2018* this is good service.
5. There is a written month-to-month rental agreement whereby the tenant resides in a duplex with shared grounds, which commenced on 1-March-2021. Rent is \$750.00 per month, due on the first day of each month. A security deposit of \$375.00 was received on 1-March-2021 and is in the landlord’s possession.
6. The landlord amended the application to increase *rent paid* from \$3000.00 to \$4500.00 and to decrease *late fees paid* from \$225.00 to \$75.00. The landlord is also seeking hearing expenses.

Issues before the Tribunal

7. The landlord is seeking:
 - An order for vacant possession of the rented premises
 - Rent paid \$4500.00
 - Late fees \$75.00
 - Hearing expenses \$20.00
 - Security deposit applied against monies owed \$375.00

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 are the following sections of the *Residential Tenancies Act, 2018*: Section 14; Security deposit, Section 15: Late fees, Section 10; Statutory Conditions and Section 22; Notice where tenant's obligation is not met. Also, relevant and considered is the following section of the *Residential Tenancies Policy Manual*: Section 12-1: Recovery of costs.

Issue # 1: Vacant Possession of the Rental Premises

Relevant Submission

10. The landlord submitted a copy of a termination notice that was given on a *Landlord's Notice to Terminate Early – Cause* form (LL#2). The notice was issued to the tenant on 15-August-2024 under Section 22; Notice where tenant's obligation is not met to vacate on 21-August-2024.

Landlord's Position

11. The landlord testified that the grounds surrounding the premises and underneath the front deck area contained a lot of junk and debris that needed to be cleaned up and disposed of. The landlord stated that the [REDACTED] contacted her several times to ensure that their request to remove the debris was completed. The landlord submitted photographs of the area to support the claim (LL#3). The landlord testified that she initially contacted the tenant on 1-May-2024 requesting that he clean up the area around the premises and she testified that she followed up with a written request on 1-June-2024 giving the tenant 3 days to clean the area (LL#4). The landlord testified that the tenant did not make any attempts to clean up the area and she stated that she issued a termination notice on 15-August-2024 to vacate the unit.

Tenant's Position

12. The tenant disputed the landlord's claim that he did not clean up the area and he testified that he did clean up all the junk and debris that belonged to him. The tenant stated that he resides in a duplex and shares the grounds with another tenant who was responsible for the remaining debris on the property. The tenant stated that he should not be responsible for cleaning up after another tenant who left the junk and debris on the grounds.

Analysis

13. The relevant subsections of Section 22 of the *Residential Tenancies Act, 2018* state:

Notice where tenant's obligation not met

22. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes statutory condition 2 set out in subsection 10(1), the landlord may give the tenant notice requiring the tenant to comply with the condition.

(2) Where a tenant contravenes statutory condition 2 set out in subsection 10(1) within 3 days after the notice under subsection (1) has been served or within a reasonable time, the landlord

may give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises on a specific date not less than 5 days after the notice has been served.

14. The relevant subsections of Section 10 of the *Residential Tenancies Act, 2018* state:

Statutory Conditions

10. (2) Obligation of the tenant -The tenant shall keep the residential premises clean, and shall repair damage caused by a wilful or negligent act of the tenant or a person whom the tenant permits on the residential premises.

In accordance with Sections 22 and 10 of the *Act* as stated above, the tenant has an obligation to keep the residential premises clean. I accept the landlord's testimony that the area around the premises did not get completely cleaned up by the tenant as requested in writing on 1-June-2024. I also accept the tenant's testimony that he cleaned up his portion of the junk and should not be responsible for debris left by another tenant. I asked the landlord if she knew who actually left the junk as shown in the photographs entered into evidence and she responded that she did not. With 2 tenants sharing a common space, I find that the landlord was unable to support her claim that the clean up was the sole responsibility of the tenant and for that reason, I find that the landlord did not have a right to issue a termination notice with cause under Section 22 of the *Act*.

Decision

15. The landlord's claim for vacant possession of the rented premises does not succeed.

Issue # 2: Rent paid \$4500.00

Relevant Submission

16. The landlord testified that rent is outstanding in the amount of \$4500.00 dating back to 1-August-2024. The landlord submitted a rental ledger to support the claim (LL#5). See copy of rental ledger below:

29-Dec-23	January Rent	\$ 750.00	\$ 750.00	\$ 0.00
1-Feb-24	February Rent	\$ 750.00	\$ 750.00	\$ 0.00
1-Mar-24	March Rent	\$ 750.00	\$ 750.00	\$ 0.00
1-Apr-24	April Rent	\$ 750.00	\$ 750.00	\$ 0.00
1-May-24	May Rent	\$ 750.00	\$ 750.00	\$ 0.00
1-Jun-24	June Rent	\$ 750.00	\$ 750.00	\$ 0.00
2-Jul-24	July Rent	\$ 750.00	\$ 750.00	\$ 0.00
1-Aug-24	August Rent	\$ 750.00	\$ 0.00	\$ 750.00
1-Sep-24	September Rent	\$ 750.00	\$ 0.00	\$ 1,500.00
1-Oct-24	October Rent	\$ 750.00	\$ 0.00	\$ 2,250.00
1-Nov-24	November Rent	\$ 750.00	\$ 0.00	\$ 3,000.00
1-Dec-24	December Rent	\$ 750.00	\$ 0.00	\$ 3,750.00
1-Jan-25	January Rent	\$ 750.00	\$ 0.00	\$ 4,500.00

Landlord's and Tenant's Positions

17. The landlord testified that the tenant has not paid rent for the last 6 months and she is seeking rent to be paid in full. The tenant did not dispute that rent is outstanding in the amount of \$4500.00.

Analysis

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 to a landlord for the use or occupancy of a residential premises. The tenant did not dispute the landlords claim for *rent paid* in the amount of \$4500.00 and for that reason, I find that the tenant is responsible to pay the landlord for outstanding rent for the period of 1-August-2024 to 31-January-2025 (6 months) in the amount of \$4500.00.

Decision

19. The landlord's claim for *rent paid* succeeds in the amount of \$4500.00.

Issue # 3: Late fees \$75.00

20. 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

21. *Residential Tenancies Policy 12-1; Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF* states:

Late payment fee:

A tenant is responsible to pay the landlord the full rent on the day the rent is due. If the rent is not paid on time, the landlord may charge the tenant a late payment fee of \$5.00 for the first day the rent is in arrears and \$2.00 for each additional day that the rent remains unpaid in any consecutive number of rental periods to a maximum of \$75.00.

22. In accordance with Section 15 of the Act and Section 12-1 of the Policy as stated above, late fees can be charged to a maximum of \$75.00 in any consecutive number of rental periods where rent is in arrears. The rental ledger shows that rent was in arrears from 1-August up to current date. I find that the tenant is responsible for the maximum late fee charges of \$75.00.

Decision

23. The landlord's claim for *late fees paid* succeeds in the amount of \$75.00.

Issue # 4: Hearing Expenses \$20.00

24. The landlord paid an application fee of \$20.00 to *Residential Tenancies* and submitted a copy of the receipt to support the claim (LL#6). In accordance with Section 12-1 of the *Residential Tenancies Policy Manual*, filing fees can be claimable costs. As the landlord's claim for losses has been partially successful, I find that the tenant is responsible for the hearing expenses.

Decision

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

Issue # 5: Security deposit applied against monies owed \$375.00

Analysis

26. 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).

27. The landlord's claim for vacant possession has not been successful as per paragraph 15 above and the tenant has the right to remain in the unit until such time as a proper termination notice is received. The security deposit shall remain with the landlord in trust until such time as the tenancy ends and for this reason, I find that the security deposit shall not be applied against monies owed at this time.

Decision

28. The security deposit shall not be applied against monies owed.

Summary of Decision

29. The landlord's claim for vacant possession does not succeed.

30. The tenant shall pay the landlord \$4595.00 as follows:

Rent paid	\$4500.00
Late fees	75.00
Hearing expenses	20.00
Total.....	<u>\$4595.00</u>

January 17, 2025

Date


Pamela Pennell, Adjudicator
Residential Tenancies Office