

Residential Tenancies Tribunal

Application 2024-1094-NL

Oksana Tkachuk
Adjudicator

Introduction

1. Hearing was called at 1:46 p.m. on 9-December-2024.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, attended via teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant”, also attended via teleconference.

Preliminary Matters

4. The landlord submitted an affidavit with his application stating that he has served the tenant with the notice of hearing via email: [REDACTED] on 25-November-2024 (LL#1). The tenant confirmed receiving the notice of the hearing on that date. In accordance with the *Residential Tenancies Act, 2018* this is good service, and the hearing proceeded.
5. There is written a fixed term rental agreement which commenced on 2-August-2024 until 31-July-2025. Rent is \$2250.00 per month, due on the first of each month. A security deposit in the amount of \$1000.00 was paid in August-2024 and is in landlord's possession.
6. The landlord amended the application to increase the rent owing amount from \$4500.00 as per application to \$6750.00 to include rent for the month of December. The disposition of the Security Deposit will be dealt in this decision.

Issues before the Tribunal

7. The landlord is seeking:
 - An Order for Vacant Possession of the rented premises;
 - Rent paid \$6750.00;
 - Security deposit to be applied against monies owed \$1000.00.

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 and Section 19: Notice where failure to pay rent.

Issue # 1: Vacant Possession of the Rented Premises

Relevant Submissions

10. The landlord submitted a copy of the termination notice under Section 19: Notice where failure to pay rent. The notice is signed and dated 18-November-2024 and was served electronically on that day, with a termination date of 29-November-2024 (LL#2).

Landlord's Position

11. The landlord stated that rent was not paid for 3 months since October-2024. As a result, the landlord is seeking vacant possession of the rental property.

Tenant's Position

12. The tenant acknowledged that she received termination notice on 18-November-2024 and agreed that rent has not been paid since October-2024. The tenant explained that her rent was paid in full by the Newfoundland and Labrador Housing Corporation, and that payments were suspended because of the termination notices issued previously by 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. In accordance with Section 19 of the *Act* as stated above, when rent is overdue, the landlord has 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, 29-November-2024 the tenant was still in arrears. I accept the landlord's and the tenant's testimony that the termination notice issued by the landlord was received by the tenant on 18-November-2024. I accept tenant's testimony that her rent payments are subsidized by Newfoundland and Labrador Housing, however I find that the landlord cannot be held responsible for any delays in subsidy payments, as it is tenant's responsibility to ensure that rent is paid in full and on time, regardless to the source of funding. For those reasons I find that the termination notice meets the technical requirements of the *Act* and is a valid notice.

Decision

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

Issue # 2: Rent Paid \$6750.00;

Landlord's Position

16. The landlord testified that rent is outstanding in the amount of \$6750.00 for the months of October, November, and December. The landlord is seeking rent to be paid in full.

Tenant's Position

17. The tenant did not dispute that rent has not been paid since October-2024. She explained that this situation arose because the landlord had issued a termination notice earlier, which led Newfoundland and Labrador Housing to stop sending payments. The tenant stated that there had already been a hearing in October, where an order was issued declaring that termination notice invalid. However, she explained that the landlord issued a new termination notice, leaving insufficient time for Newfoundland and Labrador Housing to pay the remaining rent. For this reason, she suggested to the landlord to wait, assuring that the payments would be sent directly to him.

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 during the use or occupancy of a residential premises.

19. I accept the landlord's and tenant's testimony that rent was not paid since October-2024. Payment for the month of December is amended to show a daily rate for that month as this tribunal does not consider future rent.

See amended ledger below:

Amended Rental Ledger 2024-1094-NL			
Date	Action	Amount	Total
September 31, 2024	Balance		\$0.00
October 1, 2024	Rent due	\$2,250.00	\$2,250.00
November 1, 2024	Rent due	\$2,250.00	\$4,500.00
December 1-9, 2024	Rent due	\$663.95	\$5,163.95
			\$5,163.95

Daily rate: \$2250.00 x 12 mths = \$27000.00

\$27000.00 / 366 days = \$73.77 per day

20. The tenant shall pay a daily rate of \$73.77 per day as calculate above, commencing on 10-December-2024, until such time as the landlord regains possession of the unit.

Decision

21. The landlord's claim for rent succeeds in the amount of \$5163.95.

Issue # 3: Security deposit applied against monies owed \$1000.00

Analysis

22. 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).

23. The landlord's claim has been successful as per paragraphs 15 and 21 and as such, the security deposit shall be applied against monies owed. 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 annual interest is currently 1% for 2024.

Decision

24. Security deposit plus interest in the amount of \$1003.61 to be applied against monies owed.

Summary of Decision

25. The tenant shall pay the landlord \$4160.34 as follows:

Rent paid	\$5163.95
Less security deposit plus interest	1003.61
Total	\$4160.34

26. The tenant shall vacate the property immediately.

27. The tenant shall pay a daily rate of rent beginning 10-December-2024 of \$73.77, until such time as the landlord regains possession of the property.

28. 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.

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

December 11, 2024

Date



Oksana Tkachuk, Adjudicator
Residential Tenancies Office