

Residential Tenancies Tribunal

Application 2024-1113-NL

Oksana Tkachuk
Adjudicator

Introduction

1. Hearing was called at 9:05 a.m. on 6-January-2025.
2. The applicant, [REDACTED] represented by [REDACTED] and [REDACTED], hereinafter referred to as "the landlord" attended via teleconference.
3. The respondent, [REDACTED], hereinafter referred to as "the tenant", attended via teleconference.

Preliminary Matters

4. The landlord's representative submitted affidavit with their application stating that they had served the respondent with the notice of hearing personally on 5-December-2024 (LL#1). The tenant acknowledged receiving the notice of the hearing on that date. In accordance with the *Residential Tenancies Act, 2018* this is good service, the hearing proceeded.
5. There was a written fixed term rental agreement which commenced on 1-July-2020 and converted into a month-to-month agreement (LL#2). Rent is \$1070.00 per month and due on the first of each month. A security deposit of \$405.00 was collected in the beginning of the tenancy and is in landlord's possession.
6. The landlord's representative amended the application to include hearing expenses of \$170.00. The security deposit will be applied against any monies owed.

Issues before the Tribunal

7. The landlord is seeking:
 - An Order for Vacant Possession of the rented premises;
 - Hearing expenses \$170.00.
 - Security deposit of \$405.00 to be applied against any monies owed.

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 18: Notice of termination of rental agreement and Section 12-1 of the *Residential Tenancies Policy Manual*: Costs.

Issue #1: Vacant Possession of the Rented Premises

Landlord's Position

10. The landlord's representative testified that they issued a standard termination notice on 10-September-2024 under Section 18: Notice of termination of rental agreement to vacate the premises on 31-December-2024. The landlord's representative stated that they served the tenant with the termination notice via sticking it to the door on 12-September-2024. The landlord submitted a copy of the termination notice to support the claim (LL#3).

Tenant's Position

11. The tenant testified that she did not receive a termination notice in September.

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

- (a) *not less than 4 weeks before the end of a rental period where the residential premises is rented from week to week;*
- (b) *not less than 3 months before the end of a rental period where the residential premises is rented from month to month; and*
- (c) *not less than 3 months before the end of the term where the residential premises is rented for a fixed term.*

.....

(9) In addition to the requirements under section 34, a notice under this section shall

- (a) *be signed by the person providing the notice;*
- (b) *be given not later than the first day of a rental period;*
- (c) *state the date, which shall be the last day of a rental period, on which the rental agreement terminates and the tenant intends to vacate the residential premises or the date by which the tenant is required to vacate the residential premises; and*
- (d) *be served in accordance with section 35.*

13. I asked the landlord's representative for more details regarding the delivery of the termination notice, as the tenant claimed she did not receive it. The landlord's representative testified that the notice was delivered on 12-September-2024 by one of their workers and an acknowledgement form was signed, as is their usual procedure. The landlord's representative further stated that the termination notice was posted to the door of the unit in accordance with the legislation. Based on this testimony, I accept that the termination notice was delivered in compliance with the legislative requirements. The termination notice submitted by the landlord meets the requirements of not less than 3 months before the end of the rental period after notice is served where residential premises is rented month-to-month. In accordance with the *Residential Tenancies Act, 2018* as stated above, the termination notice meets the requirements of the *Act* and is a valid notice.

14. I find that the tenant should have vacated the property by 31-December-2024.

Issue #2: Hearing expenses \$170.00.

Relevant Submission

15. The landlord paid \$20.00 for the application fee and \$150.00 for a process server and is seeking reimbursement. The landlord's representative submitted a copy of the receipts to support the claim (LL#4).

Analysis

16. In accordance with Section 12-1 of the *Residential Tenancies Policy Manual: Costs*, and as the landlord's claim was successful, the general claimable costs may include filing fee and the costs incurred in serving the application to the other party, such as process server. The landlord will be awarded \$170.00 to cover hearing expenses.

Decision

17. The landlord's claim for hearing expenses succeeds in the amount of \$170.00.

Issue #3: Security deposit applied against monies owed \$405.00.

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. The landlord's claim for losses has been successful as per paragraph 16 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 the 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 in 2020-2023 was 0% and is currently 1% for 2024-2025.

Decision

20. Security deposit plus interest in the amount of \$409.13 to be applied against monies owed.

Summary of Decision

21. The landlord shall retain \$170.00 from the security deposit to cover *hearing expenses*.

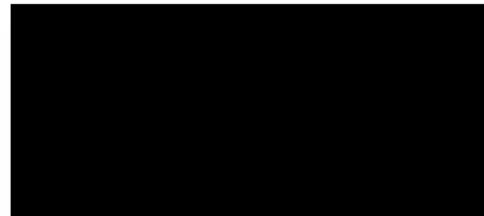
22. The tenant shall vacate the property immediately.

23. 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.

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

January 7, 2025

Date



Oksana Tkachuk, Adjudicator
Residential Tenancies Office