

Residential Tenancies Tribunal

Application 2024-1116-NL

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:02 a.m. on 6-January-2025.
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” attended by teleconference.

Preliminary Matters

4. The landlords submitted an affidavit with their application stating that they had served the tenant with the notice of hearing electronically by email to: [REDACTED] on 6-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 which commenced on 15-November-2019. Rent is \$1500.00 per month due on the first day of each month and is subsidized by *NL Housing*. A security deposit of \$675.00 was paid to the original landlord in November 2019 and is in the current landlord’s possession.
6. The application was amended to increase *rent paid* from \$963.00 to \$2889.00, to increase *late fees* from \$61.00 to \$122.00 and to include hearing expenses. Also, the disposition of the *security deposit* shall be dealt with in this decision.

Issues before the Tribunal

7. The landlord is seeking:
 - An Order for vacant possession of the rented premises.
 - Rent paid \$2889.00
 - Late fees \$122.00

- Hearing expenses \$20.00
- Security deposit applied against monies owed \$675.00

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: Fee for failure to pay rent 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 Manual*: Section 2-4: deposits, payments and fees and Section 12-1: Recovery of costs.

Issue # 1: Vacant Possession of the Rented Premises

Relevant Submission

10. The landlord submitted a copy of a termination notice given on a *Landlord's Notice to Terminate Early – Cause* form under Section 19: Notice where failure to pay rent. The notice is signed and dated for 20-November-2024, with a termination date of 2-December-2024 (LL#2).

Landlord's and Tenant's Positions

11. The landlords testified that they initially gave the tenant a termination notice on 7-November and followed up with a second notice on 20-November for non-payment of rent. The landlords testified that rent was in arrears when they gave the initial notice and was still in arrears on the termination date of 2-December. The landlords are seeking vacant possession due to nonpayment of rent. The tenant did not dispute that rent has been outstanding since 1-November-2024.

Analysis

12. 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

- 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.

13. The tenant was in rent arrears in excess of the 5 days when the termination notice was served. On the date of termination, 2-December the tenant was still in arrears. I asked the tenant if she had received the termination notice on 20-November and she responded that she had received the notice electronically. In accordance with Section 19 of 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 premises on 2-December-2024.

Decision

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

Issue # 2: Rent paid \$2889.00

Relevant Submission

16. The landlords testified that rent is outstanding in the amount of \$2889.00 and they submitted a rental ledger to support the claim (LL#3). See breakdown of rental ledger below:

Rental Ledger 2024-1116-NL			
Date	Action	Amount	Total
October 31, 2024	Balance	\$0.00	\$0.00
November 1, 2024	rent due	\$1,500.00	\$1,500.00
November 1, 2024	Payment	-\$537.00	\$963.00
December 1, 2024	Rent due	\$1,500.00	\$2,463.00
December 1, 2024	Payment	-\$537.00	\$1,926.00
January 1, 2025	Rent due	\$1,500.00	\$3,426.00
January 1, 2025	Payment	-\$537.00	\$2,889.00

Landlord's and Tenant's Positions

17. The landlords testified that rent is outstanding in the amount of \$2889.00 dating back to 1-November and they are seeking rent to be paid in full. The tenant did not dispute that rent is outstanding since November and stated that she was unable to pay the rent due to other obligations.

Analysis

18. Non-payment of rent is a violation of the rental agreement. Rent is required to be paid by a tenant(s) during the use or occupancy of a residential premises. The tenant did not dispute that she failed to pay her portion of the rent dating back to 1-November - 2024. The rental ledger is amended to show a daily rate for January as this tribunal does not consider future rent (see below).

Amended Ledger 2024-1116-NL			
Date	Action	Amount	Total
October 31, 2024		Balance	\$0.00
November 1, 2024	rent due	\$1,500.00	\$1,500.00
November 1, 2024		Payment	-\$537.00
December 1, 2024	Rent due	\$1,500.00	\$2,463.00
December 1, 2024		Payment	-\$537.00
January 1-6, 2025	Rent due	\$295.92	\$2,221.92
January 1, 2025		Payment	-\$537.00
			\$1,684.92

Daily rate: \$1500 x 12 mths = \$18000
\$18000 / 365 days = \$49.32 per day

19. I find that the tenant is responsible for outstanding rent for the period of 1-November-2024 to 6-January-2025 in the amount of \$1684.92.
20. I find that the tenant shall pay a daily rate of rent beginning 7-January-2025 of \$49.32, until such time as the landlord regains possession of the property.

Decision

21. The landlord's claim for *rent paid* succeeds in the amount of \$1684.92.

Issue # 3: Late fees \$122.00

22. 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*

23. *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.

24. In accordance with Section 15 of the Act 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-November up to current date. I find that the tenant is responsible for the maximum late fee charges of \$75.00.

Decision

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

Issue # 4: Hearing Expenses \$20.00

26. The landlord paid an application fee of \$20.00 to *Residential Tenancies* and submitted a copy of the receipt to support the claim (LL#4). 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 successful, I find that the tenant is responsible for the hearing expenses.

Decision

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

Issue # 5: Security deposit applied against monies owed \$675.00

Analysis

28. Section 14 of the *Residential Tenancies Act, 2018* deals with security deposits, and the relevant subsections state:

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).
- (12) A landlord who does not make an application in accordance with subsection (11) shall return the security deposit to the tenant.

29. The landlord's claim for losses has been successful as per paragraphs 21, 25 and 27 above 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 from 2019-2023 was 0% and is currently 1% for 2024 and 2025.

Decision

30. The landlord's claim to have the security deposit plus interest applied against monies owed succeeds.

Summary of Decision

1. The tenant shall pay the landlords \$1098.04 as follows:

Rent paid.....	\$1684.92
Late fees	75.00
Hearing expenses.....	20.00
Less Security deposit & interest.....	<u>\$681.88</u>

Total..... **\$1098.04**

2. The tenant shall pay a daily rate of rent beginning 7-January-2025 of \$49.32, until such time as the landlords regain possession of the property.
3. The tenant shall vacate the property immediately.
4. 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.
5. The landlords will be awarded an Order of Possession.

January 7, 2025

Date


Pamela Pennell, Adjudicator
Residential Tenancies Office