

Residential Tenancies Tribunal

Application 2024-1133-NL

Oksana Tkachuk
Adjudicator

Introduction

1. Hearing was called at 1:45 p.m. on 19-December-2024.
2. The applicant, [REDACTED], represented by [REDACTED] and [REDACTED], hereinafter referred to as "the landlord", attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as "the tenant" attended via teleconference.

Preliminary Matters

4. The landlord submitted affidavit with their application stating that they had served the tenant with the notice of the hearing personally on 3-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 is a written fixed term rental agreement that initially commenced on 1-September-2011 for a term of one year. Since then, it has been consistently renewed annually, with the current term starting 1-September-2024 for another year. Rent is \$875.00 per month due on the first of each month. The security deposit in the amount of \$487.50 was collected in the beginning of the tenancy 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 \$487.50.

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

Landlord's Position

11. The landlord's representative submitted copies of four termination notices issued to the tenant under Section 19: Notice where failure to pay rent for the months of August, September, October, and November (LL#2,3,4,5). The landlord's representatives stated that the tenant has continuously failed to pay rent on time, and, during 2024, not less than 6 termination notices were issued in total, including notices in March and May. The landlord's representatives further noted that, in each instance, the tenant paid the outstanding rent arrears before the termination date specified in the notices. Regarding most recent termination notice issued on 12-November, requiring the tenant to vacate the premises by 25-November, the tenant subsequently paid the rent arrears on 20-November. Given this ongoing pattern of late payments, the landlord is seeking vacant possession of the rental premises.

Landlord's Position

12. The tenant did not dispute receiving the termination notices issued under Section 19 and that rent was late on multiple occasions. He explained that the delays in rent payments were due to his lost job and his efforts to secure employment. The tenant further stated that he has now obtained full-time job and assured that he will be able to make rent payments on time or even in advance moving forward and requested that the tribunal not grant vacant possession.

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.

(2) Notwithstanding subsection (1), where the tenant pays the full amount of the overdue rent, including a fee under section 15, before the date specified in the notice under paragraph (1)(a) or (b), the rental agreement is not terminated and the tenant is not required to vacate the residential premises.

(3) Subsection (2) does not apply where notice is given to a tenant under paragraph (1)(a) or (b) more than twice in a 12 month period.

(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 and the tenant's testimony that rent was paid late on several occasions during 2024 and that at least 6 termination notices were issued to the tenant under the section 19 of the *Act* due to the failure to pay rent. I accept that all arrears were settled prior to the termination dates specified in the notices. I also accept that the rent arrears associated with the latest termination notice issued on 12-November were also paid on 20-November, prior to the termination date of 25-November. However, under subsection 19 (3) of the *Act* as stated above, if a tenant has been issued by more than two termination notices under Section 19 within a 12-month period, any subsequent termination notice issued thereafter, is considered valid. For those reasons I find that the termination notice issued on 12-November-2024 under the Section 19 of the *Act* to terminate the tenancy on 25-November-2024 is valid as it satisfies the technical requirements of the *Act*.

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 landlord paid \$20.00 for the application and are seeking reimbursement. The landlords submitted receipt for application fee (LL#6). 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 \$487.50

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 2011-2023 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 landlord \$0.00 as follows:

Hearing expenses \$20.00

Less security deposit plus interest \$492.22

Total \$0.00

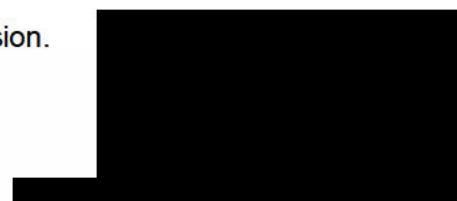
22. The tenant shall vacate the property immediately.

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 landlord will be awarded an Order of Possession.

December 23, 2024

Date



a Tkachuk, Adjudicator
Residential Tenancies Office