

Residential Tenancies Tribunal

Application 2024-1147-NL
Counterapplication 2024-1157-NL

Oksana Tkachuk
Adjudicator

Introduction

1. Hearing was called at 1:48 p.m. on 7-January-2025.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", attended via teleconference.
3. The respondent and a counter applicant [REDACTED], hereinafter referred to as "the tenant", attended via teleconference.

Preliminary Matters

4. The landlord submitted an affidavit with his application stating that he served the tenant with the notice of hearing via e-mail: [REDACTED] on 11-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.
5. The tenant submitted an affidavit with his application stating that he served the landlord with the notice of hearing via e-mail: [REDACTED] on 19-December-2024 (TT#1). The landlord 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.
6. There is a current fixed term rental agreement, effective 1-October-2024 to 30-September-2025 (LL#2), that was renewed through previous rental agreement on 1-March-2024 till 30-September-2024, following a landlord-tenant relationship that began in June-2019. Rent is \$1350.00 per month, due on the first of each month. A security deposit was paid in the amount of \$562.20 in May-2019 and is in landlord's possession.
7. The landlord amended the application to increase rent amount from \$3275.00 as per application to \$4825.00 including the month of January.
8. Security deposit shall be applied against any monies owed.

Issues before the Tribunal

9. The landlord is seeking:

- An Order for Vacant Possession of the rented premises;
- Rent paid \$4825.00;
- Late fees \$75.00;
- Hearing expenses \$20.00;

10. The tenant is seeking:

- Validity of Termination notice;
- Other - two rental increases within one year.

Legislation and Policy

11. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.

12. 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 Section 12-1 of the *Residential Tenancies Policy Manual*: Recovery of Costs, Section 2-4: Deposits, Payments and Fees and Section 13-1: Rental Increase.

Issue # 1: Vacant Possession of the Rented Premises. Validity of the Termination Notice.

Relevant Submissions:

13. The landlord submitted a copy of the termination notice under Section 19: Notice where failure to pay rent. The notice is signed and dated 28-November-2024 and was served via email [REDACTED], with a termination date of 9-December-2024 (LL#3).

Landlord's Position:

14. The landlord stated that rent has been in arrears since October-2024 when a new rental agreement took effect. The landlord stated that tenant did not paid rent in full in October and never paid rent for the months of November, December, and January. The landlord stated that the total amount the tenant owed when the termination notice was issued on 28-November-2024 was \$2025.00. As a result, the landlord is seeking vacant possession of the rental property.

Tenant's Position:

15. The tenant stated that he did not receive the termination notice, as he doesn't have a record, however he is not disputing that termination notice was issued. The tenant does not dispute that rent is in arrears.

Analysis

16. 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.*

17. 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, 9-December-2024 the tenant was still in arrears. The landlord used an email address that was stated in the rental agreement for the service and testified that this address was previously used for correspondence with the tenant. Given these admissions, I accept the landlord's testimony. I find that the termination notice meets the requirements of the Act and is a valid notice.

Decision

18. The termination notice is a valid notice. The landlord's claim for an order for vacant possession of the rented premises succeeds.

Issue # 2: Rent Paid \$4825.00 and Late Fees \$75.00.

Two rental increases within one year.

Tenant's Position:

19. While the tenant did not dispute that the rent is in arrears, he stated that the rent was unlawfully increased twice in 2024, arguing that this contravenes the legislation.

Landlord's Position:

20. The landlord testified that rent is outstanding in the amount of \$4825.00. The landlord stated that there were not two rent increases within 2024. The landlord explained that in October 2023, he gave the tenant notice of a rent increase from \$750.00 to \$1250.00 effective April 2024. However, the tenant suggested that they might reach an agreement to avoid the full rent increase at once. Instead, the tenant proposed splitting the increase so that part of the rent increase would take effect in April and rent will be \$1050.00, with

the remaining \$1350.00 in rent implemented in October. Following this, the tenant gave a termination notice in February 2024, and the parties agreed to sign a new fixed term rental agreement from 1-March-2024 to 31-September-2024, with rent set as \$1050.00. At the conclusion of this agreement, on 1-October-2024 the parties entered into a new fixed term rental agreement for one year with a rent of \$1350.00.

21. The landlord stated that, from his understanding, the two rental agreements signed during 2024 were separate and distinct. The landlord stated that they cannot be characterized as a rent increase since both parties mutually agreed to the terms outlined in each agreement, including the rent amounts. The landlord maintained that these were independent rental agreements, each with its own terms and conditions.
22. The landlord has presented a rental ledger (LL#4) and has provided notes regarding rent payments in October. Based on this information, I have complied a corresponding rental ledger. See copy of the ledger below:

| Rental Ledger 2024-1147-NL | | | |
|----------------------------|----------|------------|------------|
| Date | Action | Amount | Total |
| 31-September, 2024 | | Balance | \$0.00 |
| 1-October, 2024 | Rent due | \$1,350.00 | \$1,350.00 |
| 4-October, 2024 | | Payment | -\$275.00 |
| 10-October, 2024 | | Payment | -\$300.00 |
| 1-November, 2024 | Rent due | \$1,350.00 | \$2,125.00 |
| 1-December, 2024 | Rent due | \$1,350.00 | \$3,475.00 |
| 1-January, 2025 | Rent due | \$1,350.00 | \$4,825.00 |

23. 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*

24. *Residential Tenancies Policy 2-4; Deposits, Payments and Fees* states:

Late payment fee:

When rent is not paid on time, a landlord may charge a late fee of \$5.00 for the first day rent is in arrears and \$2.00 for each additional day that the rent remains in arrears in any consecutive number of rental periods up to a maximum of \$75.00.

25. 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. However, in order to determine the tenant's obligations, the legitimate amount of rent payments must be established in this decision.
26. Based on the testimonies of both parties, I found that the rent remained constant in its original rate from 2019 until the notice to increase was given on 1-October-2023 to take

effect on 1-April-2024. According to the landlord's and tenant's testimonies, parties signed a new fixed term rental agreement on 1-March-2024 to 31-September-2024, with rent set as \$1050.00. At the conclusion of this agreement, on 1-October-2024 the parties entered into a new fixed term rental agreement for one year with a rent of \$1350.00. According to the Section 13-1 of the *Residential Tenancies Policy*, where a landlord and tenant discontinues a rental agreement and enters into a new agreement for the same rental unit with the same tenant(s), this tenancy is considered a continuous tenancy and will be treated as such. Where a tenancy is determined to be continuous, the landlord shall not increase rent more than once in a 12-month period.

27. While the landlord and the tenant signed subsequent rental agreements with different rent amounts during the tenancy, these agreements cannot be considered as valid changes to the rent. Such changes are only permissible through a proper notice of rent increase as outlined in Section 13-1 of the Residential Tenancies Policy. As the tenant did not dispute receiving the notice to increase rent on 1-October-2023 from \$750.00 to \$1250.00, I find this notice to be valid. Therefore, I conclude that the lawful rent amount since April-2024 should be \$1250.00.

28. I accept the landlord's testimony that rent was partially paid in October and not paid for the months of November, December, and January. Therefore, with regards to the late fees and in accordance with Section 2-4 of the Policy as stated above, I find that that the maximum late fee of \$75.00 as prescribed by the Minister is allowed. Payment for the month of January 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 2024-1147-NL | | | |
|------------------------------------|----------|------------|------------|
| Date | Action | Amount | Total |
| September 31, 2024 | Balance | \$0.00 | \$0.00 |
| October 1, 2024 | Rent due | \$1,250.00 | \$1,250.00 |
| October 4, 2024 | | -\$275.00 | \$975.00 |
| October 10, 2024 | | -\$300.00 | \$675.00 |
| November 1, 2024 | Rent due | \$1,250.00 | \$1,925.00 |
| December 1, 2024 | Rent due | \$1,250.00 | \$3,175.00 |
| January 1-7, 2025 | Rent due | \$287.63 | \$3,462.63 |
| Late fees | | \$75.00 | \$3,537.63 |
| | | | \$3,537.63 |

Daily rate: \$1250.00 x 12 mths = \$15000.00
\$15000.00 / 365 days = \$41.09 per day

29. The tenant shall pay a daily rate of \$41.09 per day as calculate above, commencing on 8-January-2025, until such time as the landlord regains possession of the unit.

Decision

30. The landlord's claim for rent and late fees succeeds in the amount of \$3537.63.

Issue # 3: Hearing expenses \$20.00.

Analysis

31. 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 submitted a copy of the receipt to support his claim (LL#5) and is seeking reimbursement. As the landlord's claim has been partially successful, the tenant shall pay the hearing expenses.

Decision

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

Issue # 4: Security deposit applied against monies owed \$562.20

Analysis

33. 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).

34. The landlord's claim for vacant possession and losses has been successful as per paragraphs 27 and 29 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 in 2019-2023 was 0% and is currently 1% for 2024-2025.

Decision

35. Security deposit plus interest in the amount of \$567.94 to be applied against monies owed.

Summary of Decision

36. The tenant shall pay the landlord \$2989.69 as follows:

| | |
|--|-----------------|
| Rent | \$3537.63 |
| Hearing expenses | \$20.00 |
| Less security deposit plus interest | \$567.94 |
| Total | \$2989.69 |

37. The tenant shall vacate the property immediately.

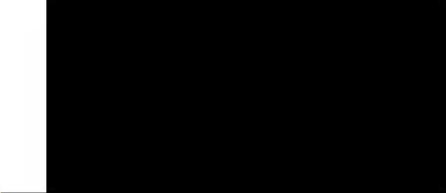
38. The tenant shall pay a daily rate of rent beginning 8-January-2025 of \$41.09, until such time as the landlord regains possession of the property.

39. 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.

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

January 15, 2025

Date


Oksana Tkachuk, Adjudicator
Residential Tenancies Office