

Residential Tenancies Tribunal

Application 2024-1151-NL

Oksana Tkachuk
Adjudicator

Introduction

1. Hearing was called at 3:15 p.m. on 15-January-2025.
2. The applicant 1, [REDACTED], attended via teleconference and represented applicant 2 [REDACTED], hereinafter referred to as “the landlords”.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as “the tenants”, did not attend.

Preliminary Matters

4. The tenants were not present or represented at the hearing and I was unable to reach them by telephone at the start of the hearing. This Tribunal’s policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, where the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent’s absence so long as he/she has been properly served. The landlords submitted an affidavit with their application stating that they had served the tenants with the notice of hearing personally by giving two sets of documents for each tenant to [REDACTED] at the residential premises on 23-December-2024 (LL#1). In accordance with the *Residential Tenancies Act, 2018* this is good service. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlords, I proceeded with the hearing in their absence.
5. There is a written month-to-month rental agreement which commenced in November-2023 (LL#2). Rent is \$700.00 per month and due on the first of each month. A security deposit of \$350.00 was collected in the beginning of the tenancy and is in landlord’s possession.
6. The landlord amended the application to increase rent amount from \$2100.00 as per application to \$2800.00 including rent for the month of January. The security deposit will be applied against any monies owed.

Issues before the Tribunal

7. The landlords are seeking:

- An Order for Vacant Possession of the rented premises;
- Rent paid \$2800.00;
- Late fees \$75.00;

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 15: Fee to failure to pay rent and Section 18: Notice of termination of rental agreement and Section 2-4 of the *Residential Tenancies Policy Manual*: Deposits, Payments and Fees.

Issue #1: Vacant Possession of the Rented Premises

Landlord's Position

10. The landlord testified that they issued a standard termination notice on 30-August-2024 under Section 18: Notice of termination of rental agreement to vacate the premises on 30-November-2024. The landlord stated that they served the tenants with the termination notice personally at the residential premises on 30-August-2024. The landlords submitted a copy of the termination notice to support their claim (LL#3).

Analysis

11. 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.

12. I accept the landlord's testimony, as the tenants were not present or represented during the hearing to provide their own testimony. Based on landlord's testimony, I accept that the termination notice was delivered in compliance with the legislative requirements on 30-August-2024. The termination notice submitted by the landlords 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.

13. I find that the tenants should have vacated the property by 31-November-2024.

Issue # 2: Rent Paid \$2800.00 and Late Fees \$75.00.

Landlord's Position:

14. The landlord testified that rent is outstanding in the amount of \$2800.00. The landlord stated that the tenants did not pay rent for four months. The landlord has presented a rental ledger. See copy of the ledger below:

Nov 1/23	Nov Rent	700.00	700.00	0
Nov 30/23	Payment	—	700.00	700.00
Dec 1/23	December rent	700.00	—	0
Jan 1/24	Jan Rent	700.00	—	700.00
Jan 31/24	Payment	—	700.00	0
Feb 1/24	Feb Rent	700.00	—	700.00
Feb 28/24	Payment	—	700.00	0
Mar 1/24	March Rent	700.00	—	700.00
Mar 31/24	Payment	—	700.00	0
Apr 1/24	April Rent	700.00	—	700.00
May 1/24	May Rent	700.00	—	1400.00
May 31/24	Payment	—	700.00	700.00
June 1/24	June Rent	700.00	—	1400.00
June 30/24	Payment	—	450.00	950.00
July 1/24	July Rent	700.00	—	1650.00
July 31/24	Payment	—	400.00	1250.00
Aug 1/24	August Rent	700.00	—	1950.00
Aug 31/24	Payment	—	1000.00	950.00
Sept 1/24	Payment	—	700.00	250.00
Sept 30/24	Payment	—	250.00	0
Oct 1/24	Sept Rent	700.00	—	700.00
Oct 31/24	Oct Rent	700.00	—	1400.00
Nov 1/24	Payment	—	700.00	700.00
Nov 30/24	Nov Rent	700.00	—	1400.00
Dec 1/24	Dec Rent	700.00	—	2100.00
Jan 1/24	Jan Rent	700.00	—	2800.00

15. 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

16. 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. I accept the landlord's testimony that rent was not paid for four months. Therefore, with regards to the late fees and in accordance with Section 15 of the Act as stated above, I find 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 2024-1151-NL			
Date	Action	Amount	Total
August 31, 2024	Balance		\$0.00
September 1, 2024	Rent due	\$700.00	\$700.00
October 1, 2024	Rent due	\$700.00	\$1,400.00
October 5, 2024	Payment	-\$700.00	\$700.00
November 1, 2024	Rent due	\$700.00	\$1,400.00
December 1, 2024	Rent due	\$700.00	\$2,100.00
January 1-15, 2025	Rent due	\$344.25	\$2,444.25
Late fees		\$75.00	\$2,519.25
			\$2,519.25

Daily rate: \$700.00 x 12 mths = \$8400.00

\$8400.00 / 366 days = \$22.95 per day

17. The tenants shall pay a daily rate of \$22.95 per day as calculate above, commencing on 16-January-2025, until such time as the landlords regains possession of the unit.

Decision

18. The landlord's claim for rent and late fees succeeds in the amount of \$2519.25.

Issue #3: Security deposit to be applied against monies owed \$350.00.

Analysis

19. 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).

20. The landlord's claim for vacant possession has been successful as per paragraph 13 and claim for losses has been successful as per paragraph 19 and as such, the security deposit shall be applied against monies owed. Pursuant to the *Residential Tenancies Act, 2018* the landlords must pay interest on a security deposit to the tenants for the entire period that the landlords have had the security deposit. The interest is calculated as simple interest and is not compounded. The annual interest in 2023 was 0% and is currently 1% for 2024-2025.

Decision

21. Security deposit plus interest in the amount of \$353.65 to be applied against monies owed.

Summary of Decision

22. The tenants shall pay the landlords \$2165.60 as follows:

Rent and late fees.....	\$2519.25
Less security deposit plus interest	\$353.65
Total	\$2165.60

23. The tenants shall vacate the property immediately.

24. The tenants shall pay a daily rate of rent beginning 16-January-2025 of \$22.95, until such time as the landlords regain possession of the property.

25. The tenants shall pay to the landlords any costs charged to the landlord by the Office of the High Sheriff should the landlords be required to have the Sheriff enforce the attached Order of Possession.

26. The landlords will be awarded an Order of Possession.

January 21, 2025

Date



Oksana Tkachuk, Adjudicator
Residential Tenancies Office