

Residential Tenancies Tribunal

Application 2024-1153-NL

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:58 p.m. on 2-January-2025.
2. The applicant, [REDACTED], represented by [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant” did not attend.

Preliminary Matters

4. The tenant was not present or represented at the hearing and I was unable to reach her 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 the notice of 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 she has been properly served. The landlord submitted an affidavit with their application stating that they had served the tenant with the notice of hearing electronically by email to: [REDACTED] on 18-December-2024 (LL#1). The landlord submitted a copy of the sent email and proof of the email address (LL#2). In accordance with the *Residential Tenancies Act, 2018* this is good service. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.
5. There is a written month-to-month rental agreement which commenced on 1-June-2023. Rent is \$764.00 per month due on the first day of each month and a security deposit of \$300.00 was paid on 25-May-2023 and is in the landlord’s possession.
6. The application was amended to increase *rent paid* from \$2808.01 as per the application to \$3572.01.

Issues before the Tribunal

7. The landlord is seeking:

- An Order for vacant possession of the rented premises.
- Rent paid \$3572.01
- Hearing expenses \$20.00
- Security deposit applied against monies owed \$300.00

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 19: Notice where failure to pay rent. Also, relevant and considered in this decision is the following section of the *Residential Tenancies Policy Manual*: 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 18-November-2024, with a termination date of 29-November-2024 (LL#3).

Landlord's Position

11. The landlord's representative testified that rent has been in arrears since 1-February-2024 and she stated that they are seeking vacant possession.

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;**
- 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, 29-November the tenant was still in arrears. The landlord submitted a photograph showing the termination notice posted to the tenant's door (LL#4). 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 29-November-2024.

Decision

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

Issue # 2: Rent paid \$3572.01

Relevant Submission

16. The landlord's representative testified that rent is outstanding in the amount of \$3572.01 and they submitted a rental ledger to support the claim (LL#5). See copy of rental ledger below:

DATE	RENT	DATE	PAYMENT	BALANCE
Balance @ January 31, 2024				0.01
February 1, 2024 (PAP Returned NSF)	764.00	February 5, 2024	754.00	10.01
March 1, 2024 (PAP Returned NSF)	764.00	March 11, 2024	764.00	10.01
April 1, 2024 (PAP Returned NSF)	764.00	April 3, 2024	764.00	10.01
May 1, 2024 (PAP Returned NSF)	764.00	May 9, 2024	200.00	574.01
		May 23, 2024	400.00	174.01
June 1, 2024	764.00	June 18, 2024	764.00	174.01
July 1, 2024	764.00			938.01
August 1, 2024	764.00	August 13, 2024	450.00	1,252.01
September 1, 2024	764.00	September 22, 2024	1,500.00	516.01
October 1, 2024	764.00			1,280.01
November 1, 2024	764.00			2,044.01
December 1, 2024	764.00			2,808.01
TOTAL	8,404.00		5,596.00	2,808.01
BALANCE @ December 4, 2024				2,808.01

Landlord's Position

17. The landlord's representative testified that rent has been outstanding since 1-February-2024 and the current outstanding balance including the month of January is \$3572.01. The landlord's representative stated that they are seeking rent to be paid in full.

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. I accept the landlord's testimony that rent is currently outstanding. The rental ledger is amended to show a daily rate for January as this tribunal does not consider future rent (see below).

Amended Rental Ledger 2024-1153-NL			
Date	Action	Amount	Total
September 30, 2024	Balance		\$516.01
October 1, 2024	Rent due	\$764.00	\$1,280.01
November 1, 2024	Rent due	\$764.00	\$2,044.01
December 1, 2024	Rent due	\$764.00	\$2,808.01
January 1-2, 2025	Rent due	\$50.24	\$2,858.25

Daily rate: $\$764 \times 12 \text{ mths} = \9168
 $\$9168 / 365 \text{ days} = \25.12 per day

19. I find that rent is outstanding for the period of 1-February to 2-January in the amount of \$2858.25.
20. The tenant shall pay a daily rate of \$25.12 effective 3-January-2025, 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 \$2858.25.

Issue # 3: Hearing Expenses \$20.00

22. The landlord paid an application fee of \$20.00 to *Residential Tenancies* and submitted a copy of the receipt to support the claim (LL#6). In accordance with Section 12-1 of the *Residential Tenancies Policy Manuel*, 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

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

Issue # 4: Security deposit applied against monies owed \$300.00

Analysis

24. 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.

25. The landlord's claim for losses has been successful as per paragraphs 21 and 23 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 for 2023 was 0% and is currently 1% for 2024-2025.

Decision

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

Summary of Decision

27. The tenant shall pay the landlord \$2575.22 as follows:

Rent paid	\$2858.25
Hearing expenses	20.00
Less: security deposit plus interest ...	303.03
Total	\$2575.22

28. The tenant shall pay a daily rate of rent beginning 3-January-2025 of \$25.12, until such time as the landlord regains possession of the property.

29. The tenant shall vacate the property immediately.

30. 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.

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

January 7, 2025
Date



Pamela Pennell, Adjudicator
Residential Tenancies Office