

Residential Tenancies Tribunal

Application 2024-1193-NL & 2025-0015-NL

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:49 p.m. on 28-January-2025.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.
3. The respondent and counter applicant, [REDACTED], represented by [REDACTED] [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.

Preliminary Matters

4. The tenant testified that she had served the landlord with the notice of hearing electronically by email on 14-January-2025. The landlord confirmed receipt of the document on that date. The landlord had made his own application against the tenant, and he submitted an affidavit with his application stating that he had the tenant served personally at the residential premises on the same date, 14-January-2025 (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 verbal month-to-month rental agreement which commenced on 3-August-2022. Rent is \$750.00 per month due on the first day of each month and a security deposit of \$575.00 was paid on 24-July-2022 and is in the landlord’s possession.
6. The landlord amended his application to decrease *late fees paid* from \$150.00 as per the application to \$75.00 and to include hearing expenses. The disposition of the security deposit shall be dealt with in this decision.

Issues before the Tribunal

7. The tenant is seeking:
 - Validity of the termination notice
8. The landlord is seeking:
 - An Order for vacant possession of the rented premises.
 - Rent paid \$1500.00

- Late fees \$75.00
- Hearing expenses \$176.00
- Security deposit to be applied against monies owed \$575.00

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 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: Validity of the Termination Notice Vacant Possession of the Rented Premises

Relevant Submission

11. 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 12-December-2024, with a termination date of 23-December-2024 (LL#2).

Landlord's and Tenant's Position

12. The landlord's representative testified that rent was in arrears when he gave the termination notice on the 12-December-2024 and was still in arrears on the termination date of 23-December-2024. The landlord is seeking vacant possession due to nonpayment of rent. The tenant did not dispute the landlords claim that rent has been outstanding since the beginning of November.

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

- 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

- 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. The tenant was in rent arrears in excess of the 5 days when the termination notice was served. On the date of termination, 23-December the tenant was still in arrears. I asked the landlord's representative how the termination notice was served, and he responded that it was sent electronically on 12-December and the tenant confirmed receipt of the notice on that date. I asked the tenant if she had paid rent in full anytime between 12-December and the termination date, 23-December and she responded that she had not. 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.

15. I find that the tenant should have vacated the premises on 23-December-2024.

Decision

16. The termination notice given on 12-December-2024 is a valid notice.

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

Issue # 2: Rent paid \$1500.00

Relevant Submission

18. The landlord's representative testified that rent is outstanding in the amount of \$1500.00 for the months of December and January and he submitted a rental ledger to support the claim (LL#3).

Landlord's and Tenant's Position

19. The landlord's representative testified that the tenant has not paid rent since November 2024, and he is seeking rent to be paid in full. The tenant did not dispute the landlords claim and confirmed that rent is outstanding for December and January.

Analysis

20. 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 the landlord's claim that rent is in arrears since December and for that reason I find that the tenant is responsible for outstanding rent to current date in the amount of \$1440.48. A daily rate of rent for January is calculated as this tribunal does not consider future rent. The daily rate of rent is calculated as follow: $\$750 \times 12 \text{ mths} = \$9000 / 365 \text{ days} = \24.66 per day .

21. I find that the tenant shall pay a daily rate of rent after 28-January-2025 in the amount of \$24.66, until such time as the landlord regains possession of the property.

Decision

22. The landlord's claim for *rent paid* succeeds in the amount of \$1440.48.

Issue # 3: Late fees \$75.00

Analysis

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.

24. *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.

25. In accordance with Section 15 of the Act and Section 12-1 of the Policy 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 tenant did not dispute that rent has been in arrears since the beginning of December and for that reason, I find that the tenant is responsible for the maximum late fee charges of \$75.00.

Decision

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

Issue # 4: Hearing Expenses \$176.00

27. The landlord paid an application fee of \$20.00 to *Residential Tenancies* and he also incurred hearing preparation costs in the amount of \$156.00. The landlord submitted a copy of the receipts to support the claim (LL#4). In accordance with Section 12-1 of the *Residential Tenancies Policy Manuel*, filing fees and other costs associated with the preparation of a hearing 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

28. The landlord's claim for *hearing expenses* succeeds in the amount of \$176.00.

Issue # 5: Security Deposit applied against monies owed \$575.00

Analysis

29. 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.

30. The landlord's claim for losses has been successful as per paragraphs 22, 26 and 28 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 2022-2023 was 0% and is currently 1% for 2024 and 2025.

Decision

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

Summary of Decision

32. The termination notice given by the landlord on 12-December-2024 is a valid notice.

33. The tenant shall pay the landlord \$1110.27 as follows:

Rent paid	\$1440.48
Late fees	75.00
Hearing expenses	176.00
Less: security deposit & interest	581.21
 Total	 \$1110.27

34. The tenant shall pay a daily rate of rent beginning 29-January-2025 of \$24.66, until such time as the landlord regains possession of the property.

35. The tenant shall vacate the property immediately.

36. 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.

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

January 30, 2025

Date



Pamela Pennell, Adjudicator
Residential Tenancies Office