

Residential Tenancies Tribunal

Application 2024-1203-NL

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:52 p.m. on 30-January-2025.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.

Preliminary Matters

4. The landlord submitted an affidavit with his application stating that he had served the tenant with the notice of hearing personally at the residential premises on 6-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 written month-to-month rental agreement and conflicting testimony as to when the tenancy commenced. The landlord testified that the tenant took possession of the unit on 15-August-2024 and the tenant testified that she moved into the unit on 23-July-2024. Rent is \$650.00 per month due on the first day of each month and there is conflicting testimony as to whether or not a security deposit was ever paid. The landlord testified that a security deposit was never paid, and the tenant testified that a security deposit of \$432.00 was paid on 24-July-2024.
6. The applicant amended his claim for *rent paid* from \$2600.00 as per the application to \$3575.00. Also, it will be determined if a security deposit has been paid and if so, dealt with in this decision.

Issues before the Tribunal

7. The landlord is seeking:
 - An Order for vacant possession of the rented premises.
 - Rent paid \$3575.00.
 - Security deposit to be determined.

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 is the following section of the *Residential Tenancies Act, 2018*: Section 19: Notice where failure to pay rent.

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 27-December-2024, with a termination date of 7-January-2025 (LL#2).

Landlord's and Tenant's Positions

11. The landlord testified that the tenant entered into a rental agreement to move into the unit on 1-August-2024, however she never took possession of the unit until 15-August and paid him \$325.00 in October and have not paid any rent since that time. The landlord is seeking vacant possession for non-payment of rent. The tenant initially testified that rent has been paid in full and then she changed her testimony to say that rent for the months of December and January was placed in trust with *Income Support*.

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

- 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.

13. The tenant was in rent arrears in excess of the 5 days when the termination notice was served. On the date of termination, 7-January the tenant was still in arrears. I asked the landlord how the termination notice was given to the tenant, and he responded that it was given to the tenant personally at the residential premises on 27-December-2024. The tenant testified that she received the notice on her door the next day at 8:28am. The landlord disputed the tenant's testimony and was confident that he gave her the termination in person on the 27-December. I accept the landlord's testimony and 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 7-January-2025.

Decision

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

Issue # 2: Rent paid \$3575.00

Landlord's and Tenant's Positions

16. The landlord testified that he entered into a rental agreement with the tenant to take possession of the unit on 1-August-2024 however she never moved into the unit until 15-August. The landlord testified that he received \$325.00 from the tenant on 15-October, and he has not received any other monies since that date. The landlord is seeking rent to be paid in full. The tenant initially testified that rent was paid in full, and she stated that she did not owe the landlord anything. I reminded the tenant that she is under oath at which time she changed her testimony to say that rent had not been paid for December and January as it was put in trust by *Income Support*:

Analysis

17. 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 he only received \$325.00 in rent payments for the duration of the tenancy. The tenant had initially testified that rent was paid in full and then changed her testimony to say that rent was held in trust since December by *Income Support*. I asked the tenant if she could provide proof that she paid the rent and she responded that she could not. The tenant stated that she always paid cash with no receipts. The tenant stated that she had text messages to the landlord's son regarding rent payments, however she did not have any exhibits entered as evidence and as the text messages were not with the landlord himself, they would not have held any weight. I do not accept the testimony of the tenant and I find that rent is outstanding since the commencement of the tenancy less \$325.00. A rental ledger has been created to show the amount of rent due and to show a daily rate for January as this tribunal does not consider future rent (see below):

Rental Ledger 2024-1203-NL			
Date	Action	Amount	Total
July 31, 2024	Balance		\$0.00
August 1, 2024	rent due	\$650.00	\$650.00
September 1, 2024	rent due	\$650.00	\$1,300.00
October 1, 2024	rent due	\$650.00	\$1,950.00
October 15, 2024	Payment	-\$325.00	\$1,625.00
November 1, 2024	rent due	\$650.00	\$2,275.00
December 1, 2024	rent due	\$650.00	\$2,925.00
January 1-30, 2025	rent due	\$641.10	\$3,566.10

Daily rate: \$650 x 12 mths = \$7800

$$\$7800 / 365 \text{ days} = \$21.37 \text{ per day}$$

18. I find that rent is outstanding for the period of 1-August-2024 to 30-January-2025 in the amount of \$3566.10.

19. The tenant shall pay a daily rate of \$21.37 effective 31-January-2025, until such time as the landlord regains possession of the property.

Decision

20. The landlord's claim for *rent paid* succeeds in the amount of \$3566.10.

Issue # 3: Security deposit

Analysis

21. There was conflicting testimony as to whether or not a security deposit was ever paid and that issue will be dealt with in this decision as when vacant possession is awarded, and monies are owed to the landlord, it is this tribunal's practice to deal with the disposition of the security deposit.

22. The landlord testified that the tenant never paid a security deposit and the tenant testified that she paid a security deposit of \$432.00 on 24-July-2024. The rental agreement which was signed by the tenant on 23-July-2024 shows that a security deposit had not been paid up to that point (LL#3). I asked the tenant if she was able to show that she paid the deposit and she responded that she was not. For those reasons, I find that a security deposit was never paid to the landlord.

Decision

23. The disposition of a security deposit will not be dealt with the purpose of this decision.

Summary of Decision

24. The disposition of a security deposit will not be dealt with for the purpose of this decision.
25. The tenant shall pay the landlord \$3566.10 in outstanding rent.
26. The tenant shall pay a daily rate of rent beginning 31-January-2025 of \$21.37, until such time as the landlord regains possession of the property.
27. The tenant shall vacate the property immediately.
28. 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.
29. The landlord will be awarded an Order of Possession.

February 7, 2025

Date



Pamela Pennell, Adjudicator
Residential Tenancies Office