

## **Residential Tenancies Tribunal**

Application 2025-0056-NL

Oksana Tkachuk  
Adjudicator

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### **Introduction**

1. Hearing was called at 9:15 a.m. on 24-February-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 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 they has been properly served. The landlord submitted an affidavit with their application stating that they have served the tenant with the notice of the hearing electronically via email: [REDACTED] on 13-February-2025 (LL#1). The landlord’s representative testified that they used this email address for communication before and submitted a proof of sent email (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 their absence.
5. There was a written fixed term rental agreement that commenced on 1-February-2021 for one year and then transferred into a month-to-month relationship. Rent is \$1400.00 per month due on the first of each month. A security deposit of \$900.00 was collected on 1-February-2021 and is still in landlord’s possession.
6. The landlord’s representative amended the application to decrease the amount of rent from \$4337.00 as per application to \$2337.00.

## Issues before the Tribunal

7. The landlord is seeking:

- An Order for Vacant Possession of the rented premises.
- Rent and late fees paid \$2337.00.
- Other expenses \$20.00;
- Security deposit of \$900.00 to be applied against any monies owed.

## 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 14: Security deposit, Section 15: Fee for failure to pay rent, Section 19: Notice where failure to pay rent, and following section of the *Residential Tenancies Policy Manual*: Section 12-1: Costs.

### Issue # 1: Vacant Possession of the Rented Premises

#### Relevant Submissions:

10. The landlord submitted a copy of termination notice under Section 19: Notice where failure to pay rent. The notice is signed and dated 2-December-2024 and was served electronically via email, on that date with a termination date of 13-December-2024 (LL#3).

#### Landlord's Position:

11. The landlord's representative testified that rent has been in arrears since November-2024 and explained that they tried to work with this situation. However, the tenant broke promises to pay-off the arrears and they are seeking vacant possession of residential premises.

## 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*

- 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. I accept the landlord's representative's testimony, as the tenant was not present or represented during the hearing to provide his own testimony. I accept that the tenant was in rent arrears in excess of the 5 days when the termination notice was served. I asked the landlord's representative, if there were any payments made by the tenant after the termination notice was issued, and she responded that the first payment made by the tenant was in January-2025. I accept that on the date of termination, 13-December-2024 the tenant was still in arrears. 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 property by 13-December-2024.

## **Decision**

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

### **Issue # 2: Rent paid \$2337.00**

#### Relevant Submission

16. The landlord testified that rent is outstanding in the amount of \$2337.00 including late fees. The landlord submitted a copy of the rental ledger to support their claim (LL#4).

#### Landlord's Position

17. The landlord's representative stated that rent has not been paid in full since November-2024 to February-2025, and explained that the payments for this period were as follows:

10-January - \$1000.00;  
13-January - \$400.00;  
10-February - \$2000.00.

18. The landlord is seeking rent to be paid in full.

## **Analysis**

19. 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.

20. 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.

21. I accept the landlord's representative's testimony, as the tenant was not presented to provide his account. Therefore, with regards to the late fees and in accordance with Section 15 of the *Residential Tenancies Act* as stated above, I find that that the late fee of \$75.00 is allowed. The rental ledger is amended to show a daily rate for February as this tribunal does not consider future rent (see below). I find that the tenant is responsible for outstanding rent till 24-February-2025 in the amount of \$1979.47.

Amended Rental Ledger 2024-0056-NL			
Date	Action	Amount	Total
October, 2024		Balance	\$0.00
November 1, 2024	Rent due	\$1,400.00	\$1,400.00
December 1, 2024	Rent due	\$1,400.00	\$2,800.00
January 1, 2025	Rent due	\$1,400.00	\$4,200.00
January 10, 2025		Payment	-\$1,000.00
January 13, 2025		Paymnet	-\$400.00
February 1-24, 2025	Rent due	\$1,104.48	\$3,904.48
February 10, 2025		Payment	-\$2,000.00
Late fees		\$75.00	\$1,979.47
			\$1,979.47

Daily rate: \$1400 x 12 mths = \$16800.00  

$$\frac{\$16800}{365 \text{ days}} = \$46.02 \text{ per day}$$

22. The tenant shall pay a daily rate of \$46.02 until such time as the landlord regains possession of the property.

## Decision

23. The landlord's claim for rent succeeds in the amount of \$1979.47.

## Issue # 3: Other expenses \$20.00.

### Relevant Submission

24. The landlord paid \$20.00 for the application fee and is seeking reimbursement. The landlord submitted a copy of the receipt to support the claim (LL#5).

## Analysis

25. In accordance with Section 12-1 of the *Residential Tenancies Policy Manual*: Costs, and as the landlord's claim was successful as per paragraphs 15 and 23, the landlord will be awarded with \$20.00 filing fee.

## Decision

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

## **Issue # 4: Security deposit to be applied against any monies owed \$900.00**

### **Analysis**

27. 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).

28. The landlord's claim for losses has been successful as per paragraphs 23 and 26 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 interest in 2021-2023 was 0%, and annual interest in 2024-2025 is 1%.

### **Decision**

29. Landlord's claim for security deposit plus interest to be applied against monies owed succeeds.

## Summary of Decision

30. The tenant shall pay to the landlord \$1089.09 as follows:

Rent .....	\$1979.47
Other expenses .....	\$20.00
<b>Less security deposit plus interest..</b>	<b>\$910.38</b>

Total..... **\$1089.09**

31. The tenant shall pay a daily rate of rent beginning 25-February-2025 of \$46.02, until such time as the landlord regains possession of the property.

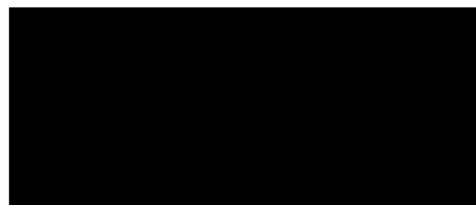
32. The tenant shall vacate the property immediately.

33. 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.

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

March 3, 2025

Date



Oksana Tkachuk, Adjudicator  
Residential Tenancies Office