

Residential Tenancies Tribunal

Application 2025-0066-NL

Oksana Tkachuk
Adjudicator

Introduction

1. Hearing was called at 1:52 p.m. on 3-March-2025.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", attended by teleconference.
3. The respondent 1, [REDACTED], attended by teleconference and was representing respondent 2, [REDACTED], hereinafter referred to as "the tenants".

Preliminary Matters

4. The landlord submitted affidavit with their application stating that they have served the tenants with the notice of the hearing by emails to: [REDACTED] and [REDACTED] on 29-January-2025 (LL#1). The tenant 1 confirmed that they received the notice of the hearing on that date. In accordance with the *Residential Tenancies Act, 2018* this is good service.
5. There was a written fixed term rental agreement which commenced on 1-December-2024 for one year, however the tenants were residing in the unit since 1-June-2024. The tenants vacated the unit on 31-December-2024. Rent was \$775.00 per month due on 1st of each month. A security deposit of \$581.25 was collected on 1-November-2024 and is still in landlord's possession.
6. The landlord amended their application to increase other expenses from \$30.00 as per application to \$50.00.

Issues before the Tribunal

7. The landlords are seeking:
 - Validity of Termination notice;
 - Rent paid \$775.00;
 - Late fees \$50.00;
 - Utilities \$433.80;
 - Other expenses \$50.00;
 - Security Deposit of \$581.25 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 are the following sections the *Residential Tenancies Act, 2018*: Section 14: Security Deposit, Section 18: Notice of termination of rental agreement, Section 15: Fee for failure to pay rent and the following section of the *Residential Tenancy Policy Manual*: Section 2-4 Deposits, Payments and Fees.

Issue # 1: Validity of a Termination notice

Landlord's Position

10. The landlord stated that the tenants explained their willingness to vacate the unit in two months via email on 1-December, however she became aware the tenants had moved out on 2-January when other tenants reported that there was no Internet connection, as the Internet service was registered under the tenant's name. The landlord asserted that tenants are not permitted to vacate a rental unit without proper legal notice. Based on these circumstances, she believes the tenants vacated the unit on or around December 31st.

The landlord is questioning the validity of the tenant's termination notice.

Tenant's Position

11. The tenant stated that on 1-December, she sent an email to the landlord indicating that they intended to vacate the unit in two months. She claimed that this email served as proper notice and further stated that they moved out at the end of December.

Analysis

12. Section 18 of the *Residential tenancies Act* states:

Notice of termination of rental agreement

18. (1) A tenant shall give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises

- (a) not less than 7 days before the end of a rental period where the residential premises is rented from week to week;
- (b) not less than one month before the end of a rental period where the residential premises is rented from month to month; and
- (c) not less than 2 months before the end of the term where the residential premises is rented for a fixed term.

13. As the landlord and tenants were in a fixed-term tenancy, their rental agreement was governed by Section 18 of the *Residential Tenancies Act*. Under this section, tenants are required to provide a notice of termination at least two months before the fixed-term tenancy's end date. The landlord acknowledged receiving the email on 1-Decemeber indicating tenant's intention to move out. However, the email sent in December does not comply with Section 18, as the termination notice must be provided toward the conclusion of the fixed-term tenancy rather than at its beginning. For these reasons, I find that the termination notice given on 1-December-2024 to vacate in two months is invalid.

Decision

14. The termination notice is not a valid termination notice.

Issue # 2: Rent paid \$775.00 Late fees \$50.00

Landlord's Position

15. The landlord is seeking payment of rent for January-2025 in the amount of \$775.00 and late fees of \$50.00, arguing that the tenants did not provide a proper termination notice.

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

Tenant's position

17. The tenant disputed the landlord's claim for rent to be paid, arguing that they gave a termination notice on 1-December.

Analysis

18. *Residential Tenancies Policy 2-4; Deposits, Payments and Fees* states:

Late payment fee:

When rent is not paid on time, a landlord may charge a late fee of \$5.00 for the first day rent is in arrears and \$2.00 for each additional day that the rent remains in arrears in any consecutive number of rental periods up to a maximum of \$75.00.

19. 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.

20. As determined in paragraph 14 of this decision, the termination notice provided by the tenants was not valid. I accept that the rent was not paid in January. Therefore, with regards to the late fees and in accordance with Section 2-4 of the Policy as stated above, I find that that the late fee of \$50.00 is allowed. I accept that as the landlord incurred a loss of rental income for the month of January due to the improper termination notice, I find the tenants responsible for outstanding rent payment for that month.

Decision

21. The landlord's claim for rent paid and late fees succeeds in the amount of \$825.00.

Issue # 3: Utilities to be paid \$433.80

Landlord's Position

22. The landlord is seeking utilities to be paid for the months of November, December and January. The landlord submitted NL Power bills for that period to support their claim (LL#2,3,4). The landlord stated that the tenants were responsible for the portion of ½ utilities bill as per their agreement. The landlord stated that she is seeking portion of \$143.1 for November, \$145.7 for December and \$145.00 for January. The landlord is seeking total of \$433.8 to be paid for the utilities.

Tenant's position

23. The tenant acknowledged that they haven't paid their portion of utilities in November and December, however disputed that they are not responsible for the January utilities, as they were not residing at the premises during that month.

Analysis

24. I accept both the tenant's and the landlord's testimony that the utility payments for November, December and January were not made by the tenants.

25. As it has already been determined in paragraphs 14 and 21, that the tenant's termination notice was invalid and that the landlord is entitled to compensation for January rent, I also find that the tenants are responsible for the utility costs for the month of January. The landlord submitted NL Power bills for the months in question to support their claim and demonstrate the amounts such as \$494.44 for November, \$500.87 for December and \$584.73 for January. I find that the amounts sought are reasonable, as they are less than half of the total utility costs. For these reasons, I find that the tenants are responsible for the outstanding utility costs in the amount of \$433.80, as claimed by the landlord.

Decision

26. The landlord's claim for utilities paid succeeds in the amount of \$433.80.

Issue # 4: Other expenses \$50.00

27. The landlord paid \$20.00 for the application fee, \$30.00 for notary services and is seeking reimbursement. The landlord submitted copies of the receipts to support the claim (LL#5,6).

Analysis

28. In accordance with Section 12-1 of the *Residential Tenancies Policy Manual*: Costs, general claimable costs may include filing fee, and the costs incurred in preparation for a hearing. As the landlord's claim was successful as per paragraphs 14, 21 and 26 the landlord will be awarded with \$50.00.

Decision

29. The landlord's claim for other expenses succeeds in the amount of \$50.00.

Issue # 5: Security deposit to be applied against any monies owed \$581.25

Analysis

30. 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).

31. The landlord's claim for losses has been successful as per paragraphs 21, 26 and 29 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 in 2024-2025 is 1%.

Decision

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

Summary of Decision

33. The termination notice is not a valid termination notice.

34. The tenants shall pay the landlord \$725.58 as follows:

Rent and late fees	\$825.00
Utilities	\$433.80
Other expenses	\$50.00
Less Security Deposit & interest	\$583.22
 Total	 \$725.58

March 6, 2025

Date

Oksana Tkachuk, Adjudicator
Residential Tenancies Office