

Residential Tenancies Tribunal

Application 2025-0073-NL

Oksana Tkachuk
Adjudicator

Introduction

1. Hearing was called at 9:05 a.m. on 7-April-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” attended via teleconference.

Preliminary Matters

4. The landlord submitted an affidavit with their application stating that they served the tenant with the notice of the hearing personally at the residential premises on 13-February-2025 (LL#1). The tenant confirmed receiving hearing documents on that date. In accordance with the *Residential Tenancies Act, 2018* this is good service, I proceeded with the hearing.
5. There was a written fixed term rental agreement that commenced on 1-June-2017 till 31-May-2018 and then converted into a month-to-month relationship. Rent is \$1045.00 per month due on the first of each month. A security deposit of \$600.00 was collected on 30-May-2017 and is still in landlord's possession.
6. The landlord's representative amended the application to increase the amount of rent from \$2334.00 as per application to \$5469.00 including April rent and to include hearing expenses of \$20.00.

Issues before the Tribunal

7. The landlord is seeking:
 - An Order for Vacant Possession of the rented premises;
 - Rent paid \$5469.00;
 - Hearing expenses \$20.00;
 - Security deposit of \$600.00 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 are the following sections of the *Residential Tenancies Act, 2018*: Section 14: Security Deposit and Section 19: Notice where failure to pay rent and following sections of the *Residential Tenancies Policy*: Section 7-1: Termination by more than 1 notice, Section 12-1: Costs.

Issue # 1: Vacant Possession of the Rented Premises

Relevant Submissions:

10. The landlord submitted two copies of termination notice under Section 19: Notice where failure to pay rent:
 - The first notice is signed and dated 26-November-2024, with a termination date of 8-December-2024 (LL#2);
 - The second termination notice is signed and dated 10-December-2024, with a termination date of 22-December-2024 (LL#3).

Landlord's and Tenant's Position:

11. The landlord's representative testified that both termination notices were served personally on the date they were issued. The landlord's representative stated that rent has been in arrears since August-2024. At the time the rent was in arrears, as of 26-November, the outstanding balance was \$2334.00. The landlord's representative testified that the tenant made a payment of \$400.00 on 2-December-2024, which did not clear the amount owing. On 10-December, they issued another termination notice and the tenant made another payment of \$400.00 on 18-December. However, this payment also did not clear the arrears. The landlord is seeking vacant possession of residential premises.
12. The tenant acknowledged receiving both termination notices and did not dispute the amount owing.

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

- 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.

14. Section 7-1 of the Residential Tenancies Policy states: *If a termination notice is already in place and a second notice is issued by the same person whereby the termination date is later than that specified in the first notice, then the person issuing the second notice has thereby indicated that they are intending the tenancy to be extended to the date set out in the second notice*, and for those reason the latest termination notice will be analyzed for the purpose of this decision.

15. I accept the landlord's representative's and tenant's testimony, that the tenant was in rent arrears in excess of the 5 days when the termination notice was served. I accept that the termination notice issued on 10-December-2024 was served in accordance with the Act. I accept that on the date of termination, 22-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.

16. I find that the tenant should have vacated the property by 22-December-2024.

Decision

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

Issue # 2: Rent paid \$5469.00

Relevant Submission

18. The landlord testified that rent is outstanding in the amount of \$5469.00 including month of April. The landlord submitted a copy of the rental ledger to support their claim, see below:

8/1/2024	8/2024	rentres - Residential rent	1,045.00	0.00	0.00	1,045.00	0.00	1,044.00
8/2/2024	8/2024	chk# M/O -	0.00	0.00	0.00	0.00	999.99	44.01
8/2/2024	8/2024	chk# M/O -	0.00	0.00	0.00	0.00	45.01	-1.00
9/1/2024	9/2024	rentres - Residential rent	1,045.00	0.00	0.00	1,045.00	0.00	1,044.00
9/4/2024	9/2024	chk# M/O -	0.00	0.00	0.00	0.00	780.00	264.00
9/17/2024	9/2024	chk# M/O -	0.00	0.00	0.00	0.00	135.00	129.00
10/1/2024	10/2024	rentres - Residential rent	1,045.00	0.00	0.00	1,045.00	0.00	1,174.00
10/6/2024	10/2024	chk# M/O -	0.00	0.00	0.00	0.00	999.99	174.01
10/8/2024	10/2024	chk# M/O -	0.00	0.00	0.00	0.00	45.01	129.00
11/1/2024	11/2024	rentres - Residential rent	1,045.00	0.00	0.00	1,045.00	0.00	1,174.00
11/7/2024	11/2024	chk# M/O -	0.00	0.00	0.00	0.00	130.00	1,044.00
12/1/2024	12/2024	rentres - Residential rent	1,045.00	0.00	0.00	1,045.00	0.00	2,089.00
12/2/2024	12/2024	chk# M/O -	0.00	0.00	0.00	0.00	400.00	1,689.00
12/18/2024	12/2024	chk# M/O -	0.00	0.00	0.00	0.00	400.00	1,289.00
1/1/2025	1/2025	rentres - Residential rent	1,045.00	0.00	0.00	1,045.00	0.00	2,334.00
2/1/2025	2/2025	rentres - Residential rent	1,045.00	0.00	0.00	1,045.00	0.00	3,379.00
3/1/2025	3/2025	rentres - Residential rent	1,045.00	0.00	0.00	1,045.00	0.00	4,424.00
4/1/2025	4/2025	rentres - Residential rent	1,045.00	0.00	0.00	1,045.00	0.00	5,469.00

Landlord's and Tenant's Position

19. The landlord's representative stated that rent has not been paid in full and in time since August-2024. The landlord is seeking rent to be paid in full.

20. The tenant did not dispute the amount owing.

Analysis

21. 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.

22. I accept both the landlord's representative's and tenant's testimony, that the rent was in arrears. The rental ledger is amended to show a daily rate for April, as this tribunal does not consider future rent (see below). I find that the tenant is responsible for outstanding rent until 7-April-2025 in the amount of \$4664.45.

Rental Ledger 2025-0073-NL			
Date	Action	Amount	Total
September 30, 2024		Balance	\$129.00
October 1, 2024	Rent due	\$1,045.00	\$1,174.00
October 8, 2024		Payment	-\$999.99
October 8, 2024		Payment	-\$45.01
November 1, 2024	Rent due	\$1,045.00	\$1,174.00
November 7, 2024		Payment	-\$130.00
December 1, 2024	Rent due	\$1,045.00	\$2,089.00
December 2, 2024		Payment	-\$400.00
December 18, 2024		Payment	-\$400.00
January 1, 2025	Rent due	\$1,045.00	\$2,334.00
February 1, 2025	Rent due	\$1,045.00	\$3,379.00
March 1, 2025	Rent due	\$1,045.00	\$4,424.00
April 1-7, 2024	Rent due	\$240.45	\$4,664.45

Daily rate: $1045 \times 12 \text{ mths} = \12540.00
 $\$12540 / 365 \text{ days} = \34.35 per day

23. The tenant shall pay a daily rate of \$34.35 until such time as the landlord regains possession of the property.

Decision

24. The landlord's claim for rent succeeds in the amount of \$4664.45.

Issue # 3: Hearing expenses \$20.00.

Relevant Submission

25. 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#4).

Analysis

26. In accordance with Section 12-1 of the *Residential Tenancies Policy Manual*: Costs, and as the landlord's claim was successful as per paragraphs 17 and 24, the landlord will be awarded with \$20.00 filing fee.

Decision

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

Issue # 3: Security deposit to be applied against any monies owed \$600.00

Analysis

28. 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).

29. The landlord's claim for losses has been successful as per paragraph 17, 24 and 27 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 2017-2023 was 0%, the annual interest in 2024-2025 is 1%.

Decision

30. Security deposit plus interest is to be applied against monies owed.

Summary of Decision

31. The tenant shall pay to the landlord \$4076.84 as follows:

Rent	\$4664.45
Hearing expenses.....	\$20.00
Less security deposit plus interest	\$607.61
Total.....	<u>\$4076.84</u>

32. The tenant shall pay a daily rate of rent beginning 8-April-2025 of \$34.35, until such time as the landlord regains possession of the property.

33. The tenant shall vacate the property immediately.

34. 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.

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

April 8, 2025

Date

Oksana Tkachuk, Adjudicator
Residential Tenancies Office