

Residential Tenancies Tribunal

Application 2025-0104-NL

Oksana Tkachuk
Adjudicator

Introduction

1. Hearing was called at 2:00 P.m. on 26-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 have been properly served. The landlord submitted an affidavit with their application stating that they had served the tenant with the notice of the hearing personally at the residential premises on 13-February-2025 (LL#1). 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-2023 for one year and then transferred into a month-to-month relationship. The landlord purchased the property on 29-October-2024. Rent is \$795.00 per month due on the first of each month. A security deposit of \$360.00 was collected at the beginning of the tenancy and is still in landlord’s possession.
6. The landlord’s representative amended the application to increase the amount of rent from \$1520.00 as per application to \$2315.00 including February rent.

Issues before the Tribunal

7. The landlord is seeking:

- An Order for Vacant Possession of the rented premises.
- Rent paid \$2315.00.
- Security deposit of \$360.00 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, Section 19: Notice where failure to pay rent.

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 16-January-2025 and was served personally at the residential premises, on that date with a termination date of 31-January-2025 (LL#2).

Landlord's Position:

11. The landlord's representative testified that rent has been in arrears since November-2024 and stated that there were no payments made by the tenant after the termination notice was issued. The landlord is 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

- 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. I accept the landlord's representative's testimony, as the tenant was not present or represented during the hearing to provide her own testimony. I accept that the tenant was in rent arrears in excess of the 5 days when the termination notice was served. I accept that on the date of termination, 31-January-2025 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 31-January-2025.

Decision

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

Issue # 2: Rent paid \$2315.00

Relevant Submission

16. The landlord testified that rent is outstanding in the amount of \$2315.00 including month of February. The landlord submitted a copy of the rental ledger to support their claim (LL#3).

Landlord's Position

17. The landlord's representative stated that rent has not been paid in full and in time since November-2024. She further stated that a rental increase took effect on 1-February-2025, raising the monthly rent from \$760.00 to \$795.00. According to the landlord, no rent payments were made for January or February. The landlord is seeking rent to be paid in full.

Analysis

18. 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.

19. I accept the landlord's representative's testimony, as the tenant was not presented to provide his account. 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 26-February-2025 in the amount of \$1839.56.

Rental Ledger 2025-0104-NL			
Date	Action	Amount	Total
October, 2024		Balance	\$0.00
November 1, 2024	Rent due	\$760.00	\$760.00
December 1, 2024	Rent due	\$760.00	\$1,520.00
December 17, 2024		Payment	-\$760.00
December 31, 2024		Payment	-\$360.00
January 1, 2025	Rent due	\$760.00	\$1,160.00
February 1-26, 2025	Rent due	\$679.56	\$1,839.56

Daily rate: \$795 x 12 mths = \$9540.00

$$\$9540 / 365 \text{ days} = \$26.13 \text{ per day}$$

20. The tenant shall pay a daily rate of \$26.13 until such time as the landlord regains possession of the property.

Decision

21. The landlord's claim for rent succeeds in the amount of \$1839.56.

Issue # 3: Security deposit to be applied against any monies owed \$360.00

Analysis

22. 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).

23. The landlord's claim for losses has been successful as per paragraph 21 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 2023 was 0%, and annual interest in 2024-2025 is 1%.

Decision

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

Summary of Decision

25. The tenant shall pay to the landlord \$1475.39 as follows:

Rent \$1839.56
Less security deposit plus interest.. \$364.17

Total..... \$1475.39

26. The tenant shall pay a daily rate of rent beginning 27-February-2025 of \$26.13, until such time as the landlord regains possession of the property.

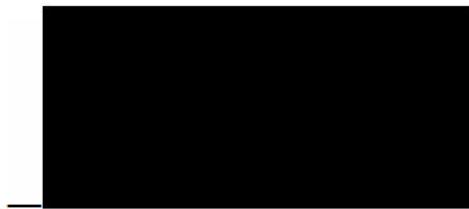
27. The tenant shall vacate the property immediately.

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.

March 3, 2025

Date



Oksana Tkachuk, Adjudicator
Residential Tenancies Office