

## Residential Tenancies Tribunal

Application 2025-0128-NL

Pamela Pennell  
Adjudicator

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### Introduction

1. Hearing was called at 1:46 p.m. on 11-March-2025.
2. The applicant, [REDACTED] represented by [REDACTED] and [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 their application stating that they had served the tenant with the notice of hearing electronically by email to: [REDACTED] on 24-February-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 term rental agreement which commenced on 11-June-2021. Rent is \$1065.00 per month due on the first day of each month and a security deposit of \$450.00 was paid on 7-June-2021 and is in the landlord's possession.
6. The application was amended to increase *rent paid* from \$1065.00 to \$1088.00 and to omit *late fees paid* from the application as they are captured in the rental ledger and included in the amount sought for *rent paid*. Also, the landlord is seeking hearing expenses.

### Issues before the Tribunal

7. The landlord is seeking:
  - An Order for vacant possession of the rented premises.
  - Rent and late fees paid \$1088.00

- Hearing expenses \$20.00
- Security deposit applied against monies owed \$450.00

## 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. Also, relevant and considered in this decision are the following sections of the *Residential Tenancies Policy Manual*: Section 12-1: Recovery of costs and Policy 2-4; Deposits, Payments and Fees.

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

#### Relevant Submission

10. The landlord submitted a copy of 4 separate termination notices, each given on a *Landlord's Notice to Terminate Early – Cause* form under Section 19: Notice where failure to pay rent. The first notice was given on 16-October-2024 to vacate on 29-October. The second notice was given on 12-November-2024 to vacate on 25-November. The third notice was given on 9-December-2024 to vacate on 22-December and the fourth notice was given on 9-January-2025 to vacate on 22-January (LL#2).

#### Landlord's Position

11. The landlord's representative testified that rent is continuously late and although it gets paid each month, it is still a late payment each month, and she emphasized that rent is due on the first of each month. The landlord's representative is seeking vacant possession under section 19(3) of the *Act*.

#### Tenant's Position

12. The tenant did not dispute that he pays rent late almost every month and he stated that he was under the impression that it was acceptable to do so as long as it was paid by the date required to terminate and he stated that he has always paid the late fees due as well. The tenant also stated that he feels that the landlord wants him to vacate the unit out of retaliation due to a recent water incident at his unit. The tenant wishes to remain in the unit and continue with a positive residential tenancies relationship whereby rent will be paid on time each month moving forward.

## 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.*

*(2) Notwithstanding subsection (1), where the tenant pays the full amount of the overdue rent, including a fee under section 15, before the date specified in the notice under paragraph (1)(a) or (b), the rental agreement is not terminated and the tenant is not required to vacate the residential premises.*

**(3) Subsection (2) **does not apply where notice is given to a tenant under paragraph (1)(a) or (b) more than twice in a 12 month period.****

**(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. The tenant was in rent arrears in excess of the 5 days when each of the termination notices were served and although the tenant paid the outstanding rent including late fees prior to the termination dates, Section 19(3) of the *Act* as stated above is clear in that subsection 2 does not apply where notices has been given more than twice in a 12-month period.

15. With regards to the tenant's claim that the landlord was pursuing vacant possession due to retaliation as a result of a recent water incident at his unit, I asked the tenant the date of this incident and he responded that it was on 6-February-2025. I find that the termination notices were all given prior to this date and the landlord had a right to give all 4 notices with cause under Section 19 of the *Act*. I find that the notices were not given out of retaliation, and in accordance with Section 19(3) of the *Residential Tenancies Act, 2018* as stated above, the landlord can seek vacant possession after the third notice for nonpayment of rent has been issued to the tenant within a 12-month period. I find that the tenant shall vacate the premises.

## **Decision**

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

## **Issue # 2: Rent and late fees paid \$1088.00**

### Relevant Submission

17. The landlord's representative testified that rent is outstanding in the amount of \$1088.00 which includes late fees, and they submitted a rental ledger to support the claim (LL#3). See copy of rental ledger below:

|           |        |           |   |          |      |      |          |          |          |
|-----------|--------|-----------|---|----------|------|------|----------|----------|----------|
| 2/20/2025 | 2/2025 | R-5065294 | chk# CMD:6785512 - Payment Received - Thank You | 0.00     | 0.00 | 0.00 | 0.00     | 1,088.00 | 0.00     |
| 3/1/2025  | 3/2025 | C-4761406 | lmt res - Lease Rent Residential                | 1,065.00 | 0.00 | 0.00 | 1,065.00 | 0.00     | 1,065.00 |
| 3/11/2025 | 3/2025 | C-4779008 | oth_late - Late Fees                            | 23.00    | 0.00 | 0.00 | 23.00    | 0.00     | 1,088.00 |

### Landlord's Position

18. The landlord's representative testified that rent is outstanding for the month of March 2025 in the amount of \$1065.00 and she is seeking late fees to be paid in the amount of \$23.00 up to the 11-March. The landlord's representative stated that they are seeking rent and late fees to be paid in full.

### Tenant's Position

19. The tenant did not dispute that rent is outstanding for the month of March nor did he dispute the late fees due.

### **Analysis**

20. 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.*

21. Residential Tenancies Policy 2-4; Deposits, Payments and Fees states;

#### **Late Fees:**

*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.*

22. 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. The tenant did not dispute that rent is outstanding and he agreed to pay the applicable late fees as well. For those reasons I find that the tenant is responsible for rent and late fees as listed below. The rental ledger is amended to show a daily rate for March as this tribunal does not consider future rent (see below).

| Amended Rental Ledger 2024-0128-NL |                     |          |          |
|------------------------------------|---------------------|----------|----------|
| Date                               | Action              | Amount   | Total    |
| February 28, 2025                  |                     | Balance  | \$0.00   |
| March 1-11, 2025                   | rent due (11 days)  | \$385.11 | \$385.11 |
| March 1-11, 2025                   | late fees (11 days) | \$23.00  | \$408.11 |

Daily rate: \$1065 x 12 mths = \$12780  
\$12780 / 365 days = \$35.01 per day

23. I find that rent is outstanding for the period of March 1-11, 2025 in the amount of \$385.11 and I find that late fees have accumulated to \$23.00 for the period of March 2-11, 2025.

24. The tenant shall pay a daily rate of rent in the amount of \$35.01 effective 12-March-2025, until such time as the landlord regains possession of the property.
25. The tenant shall pay an additional \$2.00 in late fees effective 12-March-2025, until such time as the outstanding rent is paid in full (not to exceed the maximum of \$75.00).

## Decision

26. The landlord's claim for *rent paid and late fees* succeeds in the amount of \$408.11.

## Issue # 3: Hearing Expenses \$20.00

27. The landlord paid an application fee of \$20.00 to *Residential Tenancies* and submitted a copy of the receipt to support the claim (LL#4). In accordance with Section 12-1 of the *Residential Tenancies Policy Manuel*, filing fees can be claimable costs. As the landlord's claim for losses has been successful, I find that the tenant is responsible for the hearing expenses.

## Decision

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

## Issue # 4: Security deposit applied against monies owed \$450.00

### Analysis

29. Section 14 of the *Residential Tenancies Act, 2018* deals with security deposits, and the relevant subsections state:

#### 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).
- (12) A landlord who does not make an application in accordance with subsection (11) shall return the security deposit to the tenant.

30. The landlord's claim for losses has been successful as per paragraphs 26 and 28 above and as such the security deposit shall be applied against monies owed.

## Decision

31. The security deposit shall be partially applied against monies owed.

### Summary of Decision

32. The tenant shall pay the landlord \$0.00 as follows:

|  |               |
|--|---------------|
| Rent paid & late fees.....                 | \$408.11      |
| Hearing expenses .....                     | 20.00         |
| <b>Less: partial security deposit.....</b> | <b>428.11</b> |
| <br>Total .....                            | \$0.00        |

33. The tenant shall pay a daily rate of rent beginning 12-March-2025 of \$35.01, until such time as the landlord regains possession of the property.

34. The tenant shall pay an additional \$2.00 in late fees effective 12-March-2025, until such time as the outstanding rent is paid in full (not to exceed maximum of \$75.00).

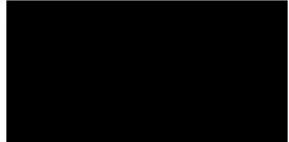
35. The tenant shall vacate the property immediately.

36. 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.

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

March 18, 2025

Date

  
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Pamela Pennell, Adjudicator  
Residential Tenancies Office