

## Residential Tenancies Tribunal

Application 2025-0161-NL

Oksana Tkachuk  
Adjudicator

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### Introduction

1. Hearing was called at 9:02 a.m. on 27-March-2025.
2. The applicant, [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 have served the tenant with the notice of the hearing electronically and personally at the residential premises on 11-March-2025 (LL#1). The tenant acknowledged receiving the notice of the hearing 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-November-2024 with the ending date of 31-August-2025. Rent is \$550.00 per month due on the first of each month. A security deposit of \$412.50 was collected on 1-November-2024 and is still in landlord’s possession.
6. The landlord amended their application to increase rent and late fees from \$920.00 to \$1660.00 including the month of March, to increase utilities from \$196.35 to \$310.69, and to include hearing expenses of \$20.00.

### Issues before the Tribunal

7. The landlord is seeking:
  - Validity on the Termination Notice;
  - An Order for Vacant Possession of the rented premises;
  - Rent paid and late fees \$1660.00;
  - Utilities to be paid \$310.69;
  - Hearing expenses \$20.00;
  - Security deposit of \$412.50 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 and the following sections of the *Residential Tenancies Policy*: Section 2-4: Deposits, Payments and Fees, Section 7-7: Failure to pay rent.

### Issue # 1: Validity of the Termination Notice Vacant Possession of the Rented Premises

#### Relevant Submissions:

10. The landlord submitted a copy of the termination notice under Section 19: Notice where failure to pay rent (LL#2). The termination notice is signed and dated 5-February-2025 with a termination date of 15-February-2025.

#### Landlord's and Tenant's Position:

11. The landlord testified that rent has been in arrears since January-2025 and stated that the rent was not paid by the tenant during the months of January, February and March and that in February the tenant paid only a portion of rent. The landlord is seeking vacant possession of residential premises.
12. The tenant did not dispute receiving the termination notice on 5-February and agreed that the rent was outstanding. However, he stated that he withheld rent because the dryer was not working from early January until it was repaired in early February. He also claimed the landlord attempted to overcharge by increasing rent for the use of washer and dryer. Additionally, the tenant cited unclean conditions and the presence of bugs and roaches as reason for withholding rent.

## 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. I accept the landlord's and tenant's testimony that the issue with nonpayment of rent was an ongoing issue, and that rent was in arrears in excess of the 5 days when the termination notice was served. I accept that the landlord issued a termination notice on 5-February-2025 requiring the tenant to vacate on 15-February-2025. According to the Section 7-7 of the Policy, *the landlord can issue a termination notice to the tenant to vacate the premises not less than 10 days after the notice is served on the tenant.* In this case, the move out date stated in the termination notice falls one day short of the required period. For these reasons, I find that the termination notice does not meet the requirements of the *Act* and is not a valid notice.

## Decision

15. The termination notice is a not a valid notice. The landlord's claim for an order for vacant possession of the rented premises does not succeed.

## Issue # 2: Rent paid and late fees \$1660.00

### Relevant Submission

16. The landlord testified that rent and late fees are outstanding in the amount of \$1660.00 including month of March.

### Landlord's Position

17. The landlord stated that rent has not been paid in full since January-2025. According to the landlord, January rent was not paid, \$250.00 payment was made in February and no rent payments were made for March. The landlord is seeking rent to be paid in full.

### Tenant's Position

18. The tenant acknowledged that rent is in arrears and did not dispute the amount claimed by the landlord.

## Analysis

19. *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.*

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 landlords' and tenant's testimony, that the rent was in arrears. I accept that January rent was not paid, payment of \$250.00 was made in February and March rent was

not paid, and 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 maximum late fee of \$75.00 is allowed.

22. The rental ledger is amended (see below). As the landlord's claim for vacant possession does not succeed and the tenant continues to reside in the unit, I find that the tenant is responsible for outstanding rent in the amount of \$1475.00 for the full period until the end of March.

Rental Ledger 2025-0161-NL			
Date	Action	Amount	Total
December 31, 2024	Balance		\$0.00
January 1, 2025	Rent due	\$550.00	\$550.00
February 1, 2025	Rent due	\$550.00	\$1,100.00
February 5, 2025	Payment	-\$250.00	\$850.00
March 1, 2025	Rent due	\$550.00	\$1,400.00
	Late fees	\$75.00	\$1,475.00
			\$1,475.00

### Decision

23. The landlord's claim for rent and late fees succeeds in the amount of \$1475.00.

### Issue # 3: Utilities to be paid \$310.69

#### Landlord's Position

24. The landlord is seeking utilities to be paid for the months of December, January, February and March. The landlord submitted NL Power bills for that period to support their claim (LL#3,4,5). The landlord stated that the tenant was responsible for the portion of 1/5 utilities bill as per their agreement. The landlord stated that he is seeking portion of 1/5 from the utility bills of \$493.79 for December, \$487.99 for January, \$571.69 for February. The landlord is seeking total of \$310.69 to be paid for the utilities.

#### Tenant's position

25. The tenant acknowledged that he hasn't paid their portion of utilities for that period.

### Analysis

26. I accept both the tenant's and the landlord's testimony that the utility payments for December, January and February and March were not made by the tenant. As the landlord did not provide NL Power bill for March, as it has not yet been issued, the tenant's responsibility for unpaid utilities will be assessed based on NL Power bills that have already been submitted.
27. The tenant is responsible for the portion of 1/5 utility costs as per rental agreement. The landlord submitted NL Power bills for the months in question to support their claim and demonstrating a total utility cost of \$1553.47. After calculating the division of this amount among 5 tenants, I find that the landlord's request amount is reasonable, as it represents the tenant's proportional share of the utility costs. For these reasons, I find that the tenant is responsible for the outstanding utility costs in the amount of \$310.69, as claimed by the landlord.

### Decision

28. The landlord's claim for utilities paid succeeds in the amount of \$310.69.

#### **Issue # 4: Hearing expenses \$20.00**

##### Relevant Submission

29. The landlord paid \$20.00 for the application fee and is seeking reimbursement. The landlord submitted a copy of the receipt to support their claim (LL#6).

##### **Analysis**

30. Section 12-1 of the *Residential Tenancies Policy* states that in general, claimable costs may include the filing fee. As the landlords' claim for losses has been successful as per paragraphs 23 and 28, the tenant shall pay the hearing expenses.

##### **Decision**

31. The landlords' claim for hearing expenses succeeds in the amount of \$20.00.

#### **Issue # 5: Security deposit to be applied against any monies owed \$412.50**

##### **Analysis**

32. 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).

33. The landlord's claim for an Order of Possession has not been successful as per paragraph 15 and as such, the security deposit shall not be applied against monies owed.

##### **Decision**

34. The landlord's claim for Security deposit to be applied against monies owed does not succeed.

## Summary of Decision

35. Termination notice is not a valid termination notice.

36. The landlord's claim for an Order of Possession does not succeed.

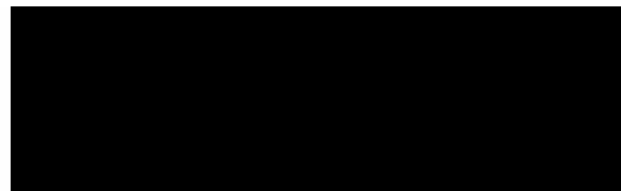
37. The tenant shall pay to the landlord \$1805.69 as follows:

Rent and late fees .....	\$1475.00
Utilities.....	\$310.69
Hearing expenses.....	\$20.00

Total.....	<u>\$1805.69</u>
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April 3, 2025

Date



Oksana Tkachuk, Adjudicator  
Residential Tenancies Office