

Residential Tenancies Tribunal

Application 2025-0206-NL

Oksana Tkachuk
Adjudicator

Introduction

1. Hearing was called at 1:46 p.m. on 8-April-2025.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” attended via teleconference.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as “the tenants” were represented by [REDACTED], who attended via teleconference.

Preliminary Matters

4. The landlord submitted two affidavit with their application stating that they had served the tenants with the notice of hearing via emails to: [REDACTED] and [REDACTED], on 22-March-2025 (LL#1,2). The tenant confirmed 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 for one year which commenced on 1-October-2017 and transferred into month-to-month rental agreement. Rent is \$1700.00 per month and due on the first of each month. A security deposit of \$1475.00 was collected on 24-August-2017 and is in landlord’s possession.
6. The landlord amended the application to increase rent paid from \$1700.00 as per application to \$3400.00 including month of April, and to include hearing expenses of \$20.00. The security deposit will be applied against any monies owed.

Issues before the Tribunal

7. The landlord is seeking:
 - Validity of a Termination Notice;
 - An Order for Vacant Possession of the rented premises;
 - Rent paid \$3400.00;
 - Hearing expenses \$20.00.

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 18: Notice of termination of rental agreement, 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 7-1: Termination by more than 1 notice and Section 12-1: Costs.

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

Relevant Submission

10. The landlord submitted two copies of termination notices:
 - under Section 18: Notice of termination of rental agreement (LL#3). The termination notice is signed and dated 1-January-2025 with a termination date of 1-April-2025;
 - under Section 19: Notice where failure to pay rent (LL#4). The termination notice is signed and dated 10-March-2025 with a termination date of 24-March-2025.

Landlord's Position

11. The landlord stated that he issued a *Standard termination notice* on 1-January and sent it to the tenants via email on the same date. The landlord explained that termination notice was issued because he intended to move back to Newfoundland from Alberta on 1-April, as his fiancée is expecting a baby. The landlord further testified that termination notice *for failure to pay rent* was issued on 10-March and sent to the tenants the same date. The landlord explained that this notice was issued because the tenants have not paid rent in March and that February and January rent was not paid on time.

Tenant's Position

12. The tenant did not dispute receiving termination notices on 1-January and 10-March. However, he stated that the landlord had repeatedly told him that he and his family could stay in the unit as long as they wanted. The tenant further explained that, given his family situation – having three children, multiple vehicles, as well as items such as snowmobiles, trampolines, pools, and barbeques – and his desire to remain in the same community, it has been very difficult to find alternative housing. The tenant asked to extend the rental period.

Analysis

13. Section 7-1 of the Policy “Termination by more than 1 notice” states: *If a termination notice is already in place and a second notice is issued by either party whereby the termination date is earlier than that specified in the first notice, then so long as this second notice is valid, the tenant is required to vacate on the date specified in the second notice*”.
14. The landlord submitted two termination notices - under the section 18 and under the section 19 of the *Act*. The termination notice under Section 19 has an earlier vacate date than the notice under the Section 18. In accordance with Section 7-1 of the *Policy*, as outlined

above, the termination notice issued under the Section 19 of the *Act* with the move out date of 24-March-2025 will be analyzed for the purpose of this decision.

15. The notice was served under Section 19 of the *Residential Tenancies Act, 2018*, which 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.**

16. Based on tenant's and landlord's testimony, I accept that the tenants did not pay rent for the month of March on time. I accept that on the date the termination notice was issued, the tenant was in rental arrears in the amount of \$1700.00. The tenant claimed that a full rent payment was made on 21-March-2025, however, the landlord disputed receiving that payment and testified that the tenant's bank cancelled the payment on 22-March-2025. The landlord submitted supporting evidence (LL#5).
17. For these reasons, I accept the landlord's testimony and evidence provided confirming that the payment was indeed cancelled and that no rent was received for the month of March, which provided the landlord with grounds to issue a termination notice for *failure to pay rent*.
18. Accordingly, I accept both the landlord's and the tenant's testimonies that the termination notice was delivered in compliance with the legislative requirements and received by the tenants on 10-March. In accordance with Section 19 of the *Act*, the termination notice submitted by the landlord provided the tenants with not less than 10 days from the date the notice was served to vacate the premises. Therefore, the termination notice meets the requirements of the *Act* and is a valid notice.
19. According to the Section 7-1 of the *Policy*, as stated above, as the second notice is determined to be valid, I find that the tenants were required to vacate the premises by the date specified in the termination notice for non-payment rent on 24-March.

Decision

20. Termination notice issued on 10-March-2025 is a valid notice.

21. The tenants should have vacated the property by 24-March-2025.

Issue # 2: Rent paid \$3400.00

Landlord's Position

22. The landlord testified that rent is outstanding in the amount of \$3400.00 including the month of April. The landlord stated that rent has not been paid on time since January-2025. According to the landlord, no rent payments were made for March and April. The landlord is seeking rent to be paid in full. The landlord submitted a rental ledger to support their claim, as below:

1-Jan-25	January Rent	\$ 1,700.00	\$ 0.00	\$ 1,700.00
2-Jan-25	Late Fee Charge	\$ 1,700.00	\$ 0.00	\$ 1,700.00
18-Jan-25	Payment	\$ 1,700.00	\$ 1,700.00	\$ 0.00
1-Feb-25	February Rent	\$ 1,700.00	\$ 0.00	\$ 1,700.00
2-Feb-25	Late Fee Charge	\$ 0.00	\$ 0.00	\$ 1,700.00
20-Feb-25	Payment	\$ 1,700.00	\$ 1,700.00	\$ 0.00
1-Mar-25	March Rent	\$ 1,700.00	\$ 0.00	\$ 1,700.00
2-Mar-25	Late Fee Charge	\$ 0.00	\$ 0.00	\$ 1,700.00

Tenant's Position

23. The tenant stated that he was almost sure that March rent was paid and acknowledged that the April rent was not paid.

Analysis

24. 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.

25. I accept the landlord's and tenant's testimony, that the rent was in arrears and that no payment was received by the landlord for March rent, as it was previously determined in paragraph 17 of this decision.

26. Payment for the month of April is amended to show a daily rate for that month as this tribunal does not consider future rent. I find that the tenants are responsible for outstanding rent in the amount of \$2147.12 until 8-April-2025. See amended ledger below:

Rental Ledger 2025-0206-NL			
Date	Action	Amount	Total
February 28, 2025	Balance		\$0.00
March 1, 2025	Rent due	\$1,700.00	\$1,700.00
April 1-8, 2025	Rent due	\$447.12	\$2,147.12
			\$2,147.12

Daily rate: $\$1700.00 \times 12 \text{ mths} = \20400.00
 $\$20400.00 / 365 \text{ days} = \55.89 per day

27. The tenant shall pay a daily rate of \$55.89 per day as calculate above, commencing on 9-April-2025, until such time as the landlords regains possession of the unit.

Decision

28. The landlord's claim for rent succeeds in the amount of \$2147.12.

Issue #3: 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 the claim (LL#6).

Analysis

30. The landlord's claim was successful as per paragraphs 20, 21 and 28. In accordance with Section 12-1 of the *Residential Tenancies Policy Manual*: Costs, the general claimable costs may include filing fee. The landlord will be awarded \$20.00 to cover hearing expenses.

Decision

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

Issue #4: Security deposit applied against monies owed \$1475.00.

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 losses has been successful as per paragraph 21, 28 and 31 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 the 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 was 0% for 2017- 2023 and the annual interest is 1% for 2024-2025.

Decision

34. Security deposit plus interest in the amount of \$1493.75 to be applied against monies owed.

Summary of Decision

35. The tenants shall pay to the landlord \$673.37 as follows:

Rent	\$2147.12
Hearing expenses.....	\$20.00
Less security deposit plus interest	\$1493.75
Total.....	<u>\$673.37</u>

36. The termination notice dated 10-March-25 is a valid termination notice.

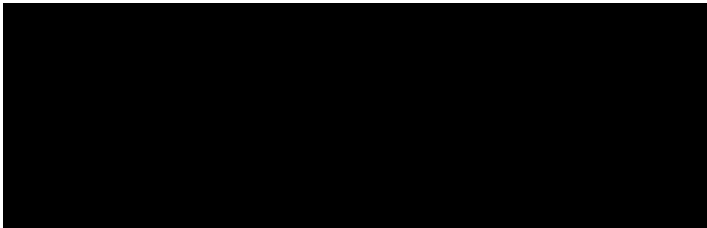
37. The tenants shall vacate the property immediately.

38. The tenants shall pay a daily rate of \$55.89 per day, commencing on 9-April-2025, until such time as the landlord regains possession of the unit.

39. The tenants 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.

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

April 14, 2025
Date



Oksana Tkachuk, Adjudicator
Residential Tenancies Office