

## **Residential Tenancies Tribunal**

Application 2025-0210-NL

Pamela Pennell  
Adjudicator

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### **Introduction**

1. Hearing was called at 2:00 p.m. on 10-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" did not attend.

### **Preliminary Matters**

4. The tenant was not present or represented at the hearing and I was unable to reach him 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 the notice of 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 he has been properly served. 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 26-March-2025 (LL#1). The landlord submitted a copy of the sent email and proof of the email address (LL#2). 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 his absence.
5. There is a written term rental agreement which commenced on 1-December-2023. Rent is \$1500.00 per month due on the first day of each month and a security deposit of \$1125.00 was paid on 27-November-2023 and is in the landlord's possession.
6. The disposition of the security deposit shall be dealt with in this decision.

### **Issues before the Tribunal**

7. The landlord is seeking:

- An Order for vacant possession of the rented premises.
- Rent paid \$1500.00
- Security deposit applied against monies owed \$1125.00

## 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.

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

#### Relevant Submission

10. The landlord submitted a copy of a 3 separate termination notices given with cause under Section 19: Notice where failure to pay rent. The notices were signed and dated for 9-September-2024 with a termination date of 20-September-2024, 9-January-2025 with a termination date of 20-January-2025 and 10-March-2025 with a termination date of 21-March-2025 (LL#3).

#### Landlord's Position

11. The landlord's representative stated that rent is continuously late, and they are seeking vacant possession.

#### 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.**

**(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) Section (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.*

13. 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 prior to the end of the months, Section 19(3) of the *Act* as stated above is clear in that subsection 2 does not apply where notices have been given more than twice in a 12-month period.
14. I asked the landlord's representative how she served each termination notice and she responded that she sent the first one via courier and the other 2 were served electronically. In accordance with Section 19 of the *Residential Tenancies Act, 2018* as stated above, the termination notices meet the requirements of the *Act* and were all valid notices.
15. I find that the tenant should have vacated the premises on 21-March-2025 once the third termination notice was served.

## Decision

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

## Issue # 2: Rent paid \$1500.00

### Relevant Submission

17. The landlord's representative testified that rent is outstanding in the amount of \$1500.00 and they submitted a rental ledger to support the claim (LL#4). See breakdown of rental ledger below:

Rental Ledger 2024-0210-NL			
Date	Action	Amount	Total
December 31, 2024	Balance	\$0.00	\$0.00
January 1, 2025	Rent due	\$1,500.00	\$1,500.00
January 22, 2025	Payment	-\$1,500.00	\$0.00
February 1, 2025	Rent due	\$1,500.00	\$1,500.00
February 6, 2025	Payment	-\$750.00	\$750.00
February 13, 2025	Payment	-\$750.00	\$0.00
March 1, 2025	Rent due	\$1,500.00	\$1,500.00
March 20, 2025	Payment	-\$1,500.00	\$0.00
April 1, 2025	Rent due	\$1,500.00	\$1,500.00

### Landlord's Position

18. The landlord's representative testified that rent is in arrears in the amount of \$1500.00 for the month of April and they are seeking rent to be paid in full.

## Analysis

19. 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. I accept the landlord's testimony and rental ledger which shows that rent is currently outstanding. The rental ledger is amended to show a daily rate for April as this tribunal does not consider future rent (see below).

Rental Ledger 2024-0210-NL			
Date	Action	Amount	Total
December 31, 2024	Balance	\$0.00	\$0.00
January 1, 2025	Rent due	\$1,500.00	\$1,500.00
January 22, 2025	Payment	-\$1,500.00	\$0.00
February 1, 2025	Rent due	\$1,500.00	\$1,500.00
February 6, 2025	Payment	-\$750.00	\$750.00
February 13, 2025	Payment	-\$750.00	\$0.00
March 1, 2025	Rent due	\$1,500.00	\$1,500.00
March 20, 2025	Payment	-\$1,500.00	\$0.00
April 1-10, 2025	Rent due (10 days)	\$493.20	\$493.20

Daily rate:  $\$1500 \times 12 \text{ mths} = \$18000$   
 $\$18000 / 365 \text{ days} = \$49.32 \text{ per day}$

20. I find that rent is outstanding for the period of 1-April-2025 to 10-April-2025 in the amount of \$493.20.

21. The tenant shall pay a daily rate of \$49.32 effective 11-April-2025, until such time as the landlord regains possession of the property.

## Decision

22. The landlord's claim for *rent paid* succeeds in the amount of \$493.20.

## Issue # 3: Security deposit applied against monies owed \$1125.00

## Analysis

23. 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.

24. The landlord's claim for losses has been successful as per paragraph 22 above and as such the security deposit shall be applied against monies owed.

### **Decision**

25. The landlord's claim to have the security deposit applied against monies owed succeeds.

### **Summary of Decision**

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

Rent paid ..... \$493.20  
Less: partial security deposit ..... 493.20

Total ..... \$0.00

27. The tenant shall pay a daily rate of rent beginning 11-April-2025 of \$49.32, until such time as the landlord regains possession of the property.

28. The tenant shall vacate the property immediately.

29. 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.

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

April 16, 2025

Date

Pamela Pennell, Adjudicator  
Residential Tenancies Office