

Residential Tenancies Tribunal

Application 2024-0106-NL

Decision 24-0106-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:48 p.m. on 26-February-2024.
2. The applicants, [REDACTED] and [REDACTED] hereinafter referred to as “the landlords” attended by teleconference.
3. The respondent, [REDACTED] hereinafter referred to as “the tenant” attended by teleconference.

Preliminary Matters

4. The landlords submitted an affidavit with their application stating that they had served the tenant with the notice of hearing electronically by text to; [REDACTED] on 14-February-2024 (LL#1). The tenant confirmed receipt of the document on that day. In accordance with the *Residential Tenancies Act, 2018* this is good service.
5. There is a written month -to-month rental agreement which commenced on 16-July-2020. Rent is \$700.00 per month due on the first of each month. A security deposit of \$350.00 was paid on 16-July-2020 and is in the landlord’s possession.
6. The landlords amended the application to increase late fees from \$72.00 to the maximum allowable of \$75.00 and the landlords are seeking hearing expenses. In situations where vacant possession is awarded, the security deposit will be applied against any monies owed.

Issues before the Tribunal

7. The landlords are seeking:
 - An Order for Vacant Possession of the rented premises.
 - Rent paid \$1400.00
 - Late fees \$75.00
 - Damages \$750.00
 - Hearing expenses \$20.00
 - Security deposit applied against monies owed \$350.00

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 is Section 9-3: Claims for Damage to Rental Premises and Section 12-1: Fees.

Issue # 1: Vacant Possession of the Rented Premises

Relevant Submissions:

10. The landlords submitted a termination notice under Section 19: Notice where failure to pay rent. The notice is signed and dated for 15-January-2024, with a termination date of 31-January-2024 (LL#2).

Landlord's Position:

11. The landlords testified that rent has been in arrears since 1-January- 2024, 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.

(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 the termination notice was served. On the date of termination, 31-January-2024 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-2024.

Decision

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

Issue # 2: Rent Paid \$1400.00

Relevant Submission

16. The landlords testified that rent is outstanding in the amount of \$1400.00 dating back to 1-January-2024. The landlords submitted a copy of the rental ledger to support their claim (LL#3). See breakdown of ledger below:

Rental Ledger 2024-0106-NL			
Date	Action	Amount	Total
December 31, 2023	Balance		\$0.00
January 1, 2024	Rent due	\$700.00	\$700.00
February 1, 2024	Rent due	\$700.00	\$1,400.00

Landlord's Position

17. The landlords testified that rent is outstanding in the amount of \$1400.00 for the period of 1-January to 29-February-2024. The landlords are seeking rent to be paid in full.

Tenant's Position

18. The tenant did not dispute that rent is outstanding since January 1, 2024. The tenant stated that she is unemployed and trying to find employment.

Analysis

19. 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.

20. 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 from 1-January to 26-February in the amount of \$1296.70.

Amended Rental Ledger 2024-0106-NL			
Date	Action	Amount	Total
December 31, 2023	Balance		\$0.00
January 1, 2024	Rent due	\$700.00	\$700.00
February 1-26, 2024	Rent due	\$596.70	\$1,296.70

Daily rate: \$700 x 12 mths = \$8400
\$8400 / 366 days = \$22.95 per day

21. I find that the tenant is responsible for outstanding rent in the amount of \$1296.70 for the period of 1-January to 26-February-2024.
22. The tenant shall pay a daily rate of \$22.95 until such time as the landlords regain possession of the property.

Decision

23. The landlord's claim for rent succeeds in the amount of \$1296.70.

Item # 3: Late Fees \$75.00

24. 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.

The minister has prescribed the following:

Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed

(a) \$5.00 for the first day the rent is in arrears, and

(b) \$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00

25. *Residential Tenancies Policy 12-1; Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF* states:

Late payment fee:

A tenant is responsible to pay the landlord the full rent on the day the rent is due. If the rent is not paid on time, the landlord may charge the tenant a late payment fee of \$5.00 for the first day the rent is in arrears and \$2.00 for each additional day that the rent remains unpaid in any consecutive number of rental periods to a maximum of \$75.00.

26. The landlord's rental ledger shows that the tenant has been in arrears since 1-January-2024. I find that the maximum allowable late fee of \$75.00 as set by the Minister is a legitimate charge as stated above.

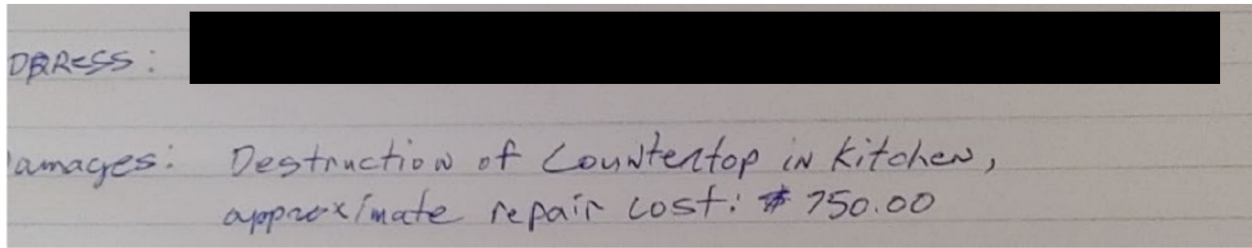
Decision

27. The landlords claim for late fees succeeds in the amount of \$75.00.

Issue # 4: Damages \$750.00

Relevant Submission

28. The landlords testified that there is damage to the kitchen countertop, and they are seeking \$750.00 to replace it. The landlords submitted a damages ledger to support their claim (LL#4). See breakdown of ledger below:



Landlord's Position

29. The landlords testified that the countertop in the kitchen needs to be replaced due to a large burn mark and several other small ones. The landlords submitted photographs to support their claim (LL#5). The landlords stated that the countertop was installed new in 2019 and cost \$550.00 at that time. The landlords stated that the replacement cost today is approximately \$750.00.

Tenant's Position

30. The tenant did not dispute that she caused the damage to the countertop.

Analysis

30. In accordance with *Residential Tenancies policy 9-3*, the applicant is required to show:

- *That the damage exists;*
- *That the respondents are responsible for the damage, through a willful or negligent act;*
- *The value to repair or replace the damaged item(s)*

31. The tenant did not dispute that she caused the damage to the countertop thus the landlords were not required to prove their case, however in accordance with Policy 9-3 of the *Residential Tenancies Policy Manual*, the landlords are required to provide at least one independent written estimate or receipt. The landlords did not provide the exact cost to replace the countertop and I accepted their testimony that the countertop cost \$550.00 in 2019. Without a written estimate of the cost to replace the countertop, I find that the landlords are entitled to the purchase price of the countertop including installation in the amount of \$550.00. I find that the tenant is responsible for the cost to replace the countertop at \$550.00.

Decision

32. The landlords claim for damages succeeds in the amount of \$550.00.

Item # 5: Hearing expenses \$20.00

33. The landlords paid an application fee of \$20.00 to *Residential Tenancies* and provided a copy of the receipt (LL#6).

34. As the landlord's claim has been successful, the tenant shall pay the \$20.00.

Decision

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

Issue # 4: Security deposit applied against monies owed \$350.00

Analysis

36. 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).
37. The landlord's claim for losses has been successful as per paragraphs 22, 26, 31 and 34 and as such the security deposit shall be applied against monies owed.

Decision

38. The security deposit of \$350.00 plus interest of \$0.55 shall be applied against monies owed.

Summary of Decision

39. The tenant shall pay the landlord \$1591.15 as follows:

Rent	\$1296.70
Late fees	75.00
Damages	550.00
Hearing expenses.....	20.00
Less Security deposit	<u>350.55</u>

Total..... \$1591.15

40. The tenant shall pay a daily rate of rent beginning 27-February-2024 of \$22.95, until such time as the landlords regain possession of the property.

41. The tenant shall vacate the property immediately.

42. The tenant shall pay to the landlords any costs charged to the landlords by the Office of the High Sheriff should the landlords be required to have the Sheriff enforce the attached Order of Possession.

43. The landlords will be awarded an Order of Possession.

March 5, 2024

Date



Pamela Pennell
Residential Tenancies Office