

Residential Tenancies Tribunal

Application 2024-0110-NL

Decision 24-0110-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:48 p.m. on 6-March-2024.
2. The applicant, [REDACTED] represented by [REDACTED] hereinafter referred to as "the landlord" attended by teleconference.
3. The respondent, [REDACTED] represented by [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 via prepaid registered mail to the residential premises [REDACTED] on 22-February-2024 (LL#1). The landlord's representative confirmed that the mail was actually sent on 16-February-2024. The tenant confirmed receipt of the document. 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 1-August-2023. Rent is \$720.00 per month due on the first of each month. A security deposit of \$300.00 was paid on 29-June-2023 and is in the landlord's possession.
6. The landlord amended the application to increase rent from \$1200.00 as per the application to \$1625.00 to reflect additional rent was due and payments made. The landlord is also seeking hearing expenses.

Issues before the Tribunal

7. The landlord is seeking:
 - An Order for Vacant Possession of the rented premises.
 - Rent paid \$1625.00
 - Hearing expenses \$20.00
 - Security deposit applied against monies owed \$300.00

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 Submissions:

10. The landlord submitted a copy of a termination notice given under Section 19: Notice where failure to pay rent. The notice is signed and dated for 11-December-2023, with a termination date of 29-December-2023 (LL#2).

Landlord's Position:

11. The landlord's representative testified that rent has been in arrears since 1-December-2023, and although payments have been made the tenant continued to carry a negative balance resulting in an outstanding amount of \$1625.00.

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, 29-December-2023 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 29-December-2023.

Decision

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

Issue # 2: Rent Paid \$1625.00

Relevant Submission

16. The landlord's representative testified that rent is outstanding in the amount of \$1625.00 dating back to December 2023. The landlord submitted a copy of the rental ledger to support their claim (LL#3). See breakdown of ledger below:

Rental Ledger 2024-0110-NL			
Date	Action	Amount	Total
November 31, 2023		Balance	-\$170.00
December 1, 2023	Rent due	\$720.00	\$550.00
December 1, 2023		Payment	-\$200.00
December 31, 2023		Payment	-\$295.00
January 1, 2024	Rent due	\$720.00	\$775.00
Janury 1, 2024		Payment	-\$295.00
February 1, 2024	Rent due	\$720.00	\$1,200.00
February 29, 2024		Payment	-\$295.00
March 1, 2024	Rent due	\$720.00	\$1,625.00

Landlord's Position

17. The landlord's representative testified that rent is outstanding in the amount of \$1625.00 for the period of 1-December to 31-March. The landlord is seeking rent to be paid in full.

Analysis

18. 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.

19. The rental ledger is amended to show a daily rate for March as this tribunal does not consider future rent (see below). I find that the tenant is responsible for outstanding rent from 1-December to 6-March in the amount of \$1046.66.

Amended Rental Ledger 2024-0110-NL			
Date	Action	Amount	Total
November 31, 2023	Balance		-\$170.00
December 1, 2023	Rent due	\$720.00	\$550.00
December 1, 2023	Payment	-\$200.00	\$350.00
December 31, 2023	Payment	-\$295.00	\$55.00
January 1, 2024	Rent due	\$720.00	\$775.00
January 1, 2024	Payment	-\$295.00	\$480.00
February 1, 2024	Rent due	\$720.00	\$1,200.00
February 29, 2024	Payment	-\$295.00	\$905.00
March 1-6, 2024	Rent due	\$141.66	\$1,046.66

Daily rate: \$720 x 12 mths = \$8640
\$8640 / 366 days = \$23.61 per day

20. The tenant shall pay a daily rate of \$23.61 until such time as the landlord regains possession of the property.

Decision

21. The landlord's claim for rent succeeds in the amount of \$1046.66.

Issue # 3: Hearing expenses \$20.00

22. The landlord paid an application fee of \$20.00 to *Residential Tenancies* and provided a copy of the receipt (LL#4).

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

Decision

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

Issue # 4: Security deposit applied against monies owed \$300.00

Analysis

25. 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).*

26. The landlord's claim for losses has been successful as per paragraphs 21 and 24 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 a 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 annual interest for 2023 was 0% and is currently 1% for 2024.

Decision

27. The landlord's claim for security deposit plus interest to be applied against monies owed succeeds.

Summary of Decision

28. The tenant shall pay the landlord \$766.11 as follows:

Rent	\$1046.66
Hearing expenses.....	20.00
Less security deposit & interest	<u>300.55</u>
Total.....	<u>\$766.11</u>

29. The tenant shall pay a daily rate of rent beginning 7-March-2024 of \$23.61, until such time as the landlord regains possession of the property.

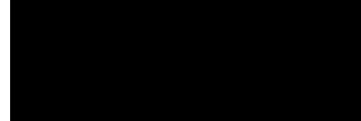
30. The tenant shall vacate the property immediately.

31. 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.

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

March 14, 2024

Date



Pamela Pennell
Residential Tenancies Office