

Residential Tenancies Tribunal

Application 2024-0161-NL
Application 2024-0168-NL

Decision 24-0161-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:07 a.m. on 14-March-2024.
2. The applicant, [REDACTED] hereinafter referred to as “the tenant” attended by teleconference.
3. The respondents and counter applicants, [REDACTED] (respondent 1) and [REDACTED] (respondent 2), hereinafter referred to as “the landlords” attended by teleconference.

Preliminary Matters

4. The tenant testified that he served respondent 1 with the notice of hearing electronically by email to: [REDACTED] on 29-February-2024. The respondents and counter applicants submitted an affidavit stating that they served the tenant with the notice of hearing electronically to: [REDACTED] on 28-February-2024 (LL#1). Both parties confirmed receipt of documents. In accordance with the *Residential Tenancies Act, 2018* the tenant did not serve properly as he only served one respondent, however the landlords had good service. As the tenant’s issue of validity will be dealt with in the landlord’s application for vacant possession, I proceeded with the hearing.
5. There is a written term rental agreement which commenced on 1-June-2023. Rent is \$1500.00 per month, due on the first of each month. A security deposit of \$1000.00 was paid on 1-June-2023 and is in the landlord’s possession.
6. The landlords amended their application to increase rent from \$1850.00 as per the application to \$3200.00 to include rent for the months of February and March and to deduct payments made, to apply the security deposit against monies owed and to seek hearing expenses.

Issues before the Tribunal

7. The tenant is seeking:
 - Validity of termination notice

8. The landlords are seeking:

- An Order for Vacant Possession of the rented premises.
- Rent paid \$3200.00
- Hearing expenses \$20.00
- Security deposit applied against monies owed \$1000.00

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.

10. 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: Validity of termination notice Vacant Possession of the Rented Premises

Relevant Submission

11. The tenant submitted a copy of a termination notice given to him under Section 19: Notice where failure to pay rent. The notice is signed and dated for 15-February-2024, with a termination date of 26-February-2024 (TT#1).

Tenants' Position

12. The tenant is questioning the validity of the termination notice as he stated that he feels frustrated with the condition of the unit and lack of support from the landlords. The tenant stated that he feels that he had a right to withhold rent as there are several repairs that need to be completed at the unit and the landlords are not addressing his concerns.

Landlord's Position

13. The landlords testified that they gave the termination notice due to nonpayment of rent and they are seeking to take back their unit.

Analysis

14. 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.

15. The tenant was in rent arrears in excess of the 5 days when the termination notice was served. On the date of termination, 26-February-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.

16. I find that the tenant should have vacated the property by 26-February-2024.

Decision

17. The termination notice dated 15-February-2024 is a valid notice.

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

Issue # 2: Rent Paid \$3200.00

Relevant Submission

19. The landlords testified that rent is outstanding in the amount of \$3200.00 dating back to December 2023. The landlords submitted a copy of the rental ledger to support their claim (LL#2). See breakdown of ledger below:

Rental Ledger 2024-0161-NL & 2024-0168-NL			
Date	Action	Amount	Total
November 30, 2023	Balance	\$0.00	
December 1, 2023	Rent due	\$1,500.00	\$1,500.00
December 11, 2023	Payment	-\$750.00	\$750.00
December 21, 2023	Payment	-\$400.00	\$350.00
January 1, 2024	Rent due	\$1,500.00	\$1,850.00
January 8, 2024	Payment	-\$1,300.00	\$550.00
January 15, 2024	Payment	-\$350.00	\$200.00
February 1, 2024	Rent due	\$1,500.00	\$1,700.00
March 1, 2024	Rent due	\$1,500.00	\$3,200.00

Landlord's Position

20. The landlords testified that rent is outstanding in the amount of \$3200.00 for the period of 1-December-2023 to 31-March-2024. The landlords are seeking rent to be paid in full.

Tenant's Position

21. The tenant did not dispute that he owes \$3200.00 in outstanding rent and testified that he withheld rent as a result of the lack of support from the landlords with regards to much needed repairs within the unit. The tenant testified that he got extremely frustrated at the

end of January and felt that the landlords would fix the necessary repairs if he withheld the rent.

Analysis

22. 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. I accept that the tenant was frustrated and wanted to force the landlords' hand to have repairs completed; however, in accordance with the *Residential Tenancies Act, 2018* there are remedies to solve residential tenancy disputes. Upon adjudication, an order can be made to reduce rent until such time as repairs are made, however, a tenant cannot arbitrarily withhold rent. As stated above, rent is required to be paid in full under a rental agreement and for that reason, I find that the tenant is responsible to pay the outstanding rent in full.

23. 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 up to 14-March in the amount of \$2388.52.

Amended Ledger 2024-0161-NL & 2024-0168-NL			
Date	Action	Amount	Total
November 30, 2023	Balance	\$0.00	\$0.00
December 1, 2023	Rent due	\$1,500.00	\$1,500.00
December 11, 2023	Payment	-\$750.00	\$750.00
December 21, 2023	Payment	-\$400.00	\$350.00
January 1, 2024	Rent due	\$1,500.00	\$1,850.00
January 8, 2024	Payment	-\$1,300.00	\$550.00
January 15, 2024	Payment	-\$350.00	\$200.00
February 1, 2024	Rent due	\$1,500.00	\$1,700.00
March 1-14, 2024	Rent due	\$688.52	\$2,388.52

Daily rate: $\$1500 \times 12 \text{ mths} = \18000
 $\$18000 / 366 \text{ days} = \49.18 per day

24. The tenant shall pay a daily rate of \$49.18 until such time as the landlords regain possession of the property.

Decision

25. The landlord's claim for rent succeeds in the amount of \$2388.52.

Issue # 3: Utilities \$963.27

Relevant Submission

26. The landlords testified that the tenant was responsible for keeping oil in the tank as per part 11 of the rental agreement (LL#3) and the landlords testified that the oil tank went empty in January which caused problems for the furnace as well. The landlords are seeking the cost of putting oil in the tank and the fee to restart the furnace in the amount of \$963.27. The landlords submitted a copy of a utility ledger (LL#4) to support their claim and the 2 invoices from Harvey's Oil (LL#5).

Landlord's Position

27. The landlords testified that the oil tank was reading empty on the 25-January-2024 and they decided to pay for the oil to ensure that there was heat to their unit. The landlords testified that when *Harvey's Oil Limited* arrived they had to restart the furnace due to an empty tank. The landlords are seeking the cost of the oil and the fee to restart the furnace.

Tenants' Position

28. The tenant did not dispute that the tank was empty in January, and he did not dispute that it was his responsibility to ensure that there was oil in the tank.

Analysis

29. I accept that the tenant is responsible to ensure that there is oil in the tank and the tenant did not dispute that the tank went empty in January. I find that the landlord's utility ledger does not line up with the amount on the invoice from *Harvey's Oil Limited*. I find that the tenant is responsible to reimburse the landlords for the oil that was put in the tank on 25-January-2024 in the amount of \$584.26 and the fee to restart the furnace in the amount of \$124.07.

Decision

30. The landlord's claim for utilities paid succeeds in the amount of \$708.33.

Issue # 4: Hearing expenses \$20.00

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

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

Decision

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

Issue # 4: Security deposit applied against monies owed \$1000.00

Analysis

34. 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).

35. The landlord's claim for losses has been successful as per paragraphs 25, 30 and 33, 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

36. The landlord's claim for the security deposit to be applied against monies owed succeeds.

Summary of Decision

37. The tenant shall pay the landlord \$2114.80 as follows:

Rent.....	\$2388.52
Utilities paid.....	708.33
Hearing expenses	20.00
Less security deposit.....	1002.05
 Total.....	 <u>\$2114.80</u>

38. The tenant shall pay a daily rate of rent beginning 15-March-2024 of \$49.18, until such time as the landlords regain possession of the property.

39. The tenant shall vacate the property immediately.

40. 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.

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

March 26, 2024

Date



Pamela Pennell
Residential Tenancies Office