

## Residential Tenancies Tribunal

Application 2024-0194-NL &  
2024-0205-NL

Decision 2024-0194-NL &  
2024-0205-NL

Michael Reddy  
Adjudicator

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### Introduction

1. The hearing was call at 9:06 AM on 3 April 2024 via teleconference. The hearing was to adjudicate two separate applications: 2024-0194-NL and 2024-0205-NL.
2. [REDACTED], hereinafter referred to as “landlord1”, attended the hearing. [REDACTED] [REDACTED], hereinafter referred to as “landlord2”, attended the hearing. The landlords did not call any witnesses.
3. [REDACTED], hereinafter referred to as “tenant1”, attended the hearing. [REDACTED], hereinafter referred to as “tenant2”, did not attend the hearing. Tenant1 stated tenant2 was not available on the date of the hearing. Tenant1 did not call any witnesses.

### Preliminary Matters

4. Landlord1 submitted a written rental agreement, along with his application (**Exhibit L # 1**). Landlord1 issued both tenants a Landlord’s Notice to Terminate Early- Cause under Section 19 of the *Residential Tenancies Act*, 2018, on 26 February 2024 with a request to vacate the rental on 8 March 2024 (**Exhibit L # 2**). Landlord1 submitted an affidavit indicating on 19 March 2024, he served tenant1 electronically at [REDACTED] and tenant2 electronically at [REDACTED] on 19 March 2024 the Application for Dispute Resolution (**Exhibit L # 3**).
5. Landlord1 testified to the best of his knowledge and belief, the tenants remain in the three-bedroom attached home at [REDACTED], on the date of the hearing (3 April 2024).
6. Landlord1 amended his application to include rental arrears owing for April 2024.
7. Tenant1 did not provide any evidence of service to the landlord in relation to application 2024-0194-NL and during the hearing testified he did not serve the respondent.

8. In a proceeding under the *Residential Tenancies Act*, 2018, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicant has to establish that his/her account of events are more likely than not to have happened.

### **Issues before the Tribunal**

9. The landlords are seeking the following:
  1. Payment of rental arrears in the amount of \$2,300.00
  2. Order of Eviction/ Possession of property
  3. Security deposit applied against monies owing.
10. The tenants are seeking the following:
  1. Validity of termination notice

### **Legislation and Policy**

11. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of “*the Act*”.
12. Also relevant and considered in this case are sections 10, 14, 19, 34 and 35 of the *Residential Tenancies Act*, 2018.

### **Issue # 1: Rental Arrears**

#### Landlord position

13. Landlord1 stated that there is a written monthly rental agreement established with the tenants, who have occupied the rental since 20 January 2024. Monthly rent is \$2,300.00 due on the 20<sup>th</sup> of each month and there was a security deposit paid in full on 20 January 2024 in the amount of \$1,000.00 which he remains in possession of (**Exhibit L # 1**).
14. The landlords offered evidence that the tenants were issued a Landlord Notice to Terminate Early-Cause by personal service 26 February 2024 with a request to vacate the rental by 8 March 2024 (**Exhibit L # 2**).
15. Landlord1 testified the tenants have not paid any rent since 20 January 2024.
16. Landlord1 amended his original application at the hearing and was seeking rental arrears up to 30 April 2024.
17. Landlord1 offered an updated Rent Ledger (**Exhibit # 4**) along with his application. This evidence indicates the following information:

Date	Transaction	Amount Due	Paid	Balance
19 Jan 2024	Payment		\$2,000.00	
20 Jan 2024	Rent due	\$300.00	\$300.00	\$0.00
20 Feb 2024	Rent due	\$2,300.00	\$0.00	\$2,300.00
20 Mar 2024	Rent due	\$2,300.00	\$0.00	\$4,600.00

### Tenant Position

18. Tenant1 did not dispute receiving the Application for Dispute Resolution or the Section 19 Notice as indicated by the landlord.
19. Tenant1 testified during the hearing that they did owe rental arrears and did not dispute the amount of rental arrears indicated by the landlord. He testified during the hearing, the only rent paid was for January 2024. Tenant1 stated he remained in the rental property on the date of the hearing.

### **Analysis**

20. Non-payment of rent is a violation of the rental agreement. The landlord has amended the claim at the outset to add rent to include rent for April 2024.
21. Landlord1 submitted Notice under Section 19 issued to the tenants on 26 February 2024 (**Exhibit L # 2**). As such, rent was due 1 March 2024 and rental arrears owing by the tenants equaling **\$4,600.00** including up to 31 March 2024.
22. As this tribunal does not consider future rent payments, rent for April 2024 can only be calculated up to and including the day of the hearing (3 April 2024). That calculation is  $(\$2,300.00 \times 12 \text{ months} = \$27,600.00 \div 366 \text{ days} = \$75.41 \text{ per day} \times 3 \text{ days} = \$226.23)$ . Rent for 3 April 2024 is **\$226.23**.
23. I accept the landlord's claim that the tenants have not paid rent as required. The current Balance of rental arrears owed to the landlord's is **\$4,826.23**.

### **Decision**

24. The landlord's claim for rental arrears succeeds in the amount of **\$4,826.23**.
25. Additionally, the tenants are responsible for daily rent in the amount of **\$75.41** beginning on 4 April 2024 and continuing until the day the landlord obtains vacant possession of the rented premises.

### **Issue # 2: Vacant Possession of Rented Premises**

26. Landlord1 submitted termination Notice under Section 19, in relation to the tenants' failure to pay rent (**Exhibit L # 2**).

## Analysis

27. Section 19 of the *Residential Tenancies Act, 2018* states:

- a. **Notice where failure to pay rent**
- b. **19.** (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),
  - i. (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
  - c. 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.
    - i. (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.

28. The tenants had been in rental arrears in excess of 5 days when the notice was served on 26 February 2024 to be out of [REDACTED], by 8 March 2024.

The notice meets all other requirements as per the *Act* in that: it was signed by the landlord; stated the termination date more than 10 days after notice was served; and the notice itself was properly served. The tenants remain in the property following being issued the notice to vacate.

29. I find the termination notice is a valid notice, and the tenants should have vacated the property on 8 March 2024.

## Decision

30. The landlord's claim for an order for vacant possession succeeds.

### **Issue # 3: Security Deposit**

31. The landlord is seeking to retain the security deposit of \$1,000.00. Landlord1 testified that the tenants had paid a security deposit of \$1,000.00 and submitted evidence to support this claim (**Exhibit L # 1**). As the landlord's claim for rent has succeeded, the security deposit, plus applicable interest at the rate prescribed by the Security Deposit Interest Regulations shall be applied against monies owed [ $\$1000 * 1\% * (75/366 \text{ days}) = \$2.05 \text{ total interest}$ ].

### **Decision**

32. The landlord's claim for retention on the security deposit succeeds

### **Summary of Decision**

33. The landlord is entitled to the following:

- A payment of **\$3,824.18**, as determined as follows:
  - a) Rent owing ..... \$4,826.23
  - b) **Less: Security Deposit/interest** ..... **\$1,002.05**
  - c) Total.....**\$3,824.18**
- A payment of a daily rate of rent in the amount of **\$75.41**, beginning 4 April 2024 and continuing to the date the landlord obtains vacant possession of the rental unit,
- An order for vacant possession of the rented premises,
- The tenants shall also 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.

26 April 2024

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Date

Michael J. Reddy  
Residential Tenancies Office