

Residential Tenancies Tribunal

Application 2024-0277-NL

Decision 24-0277-00

Oksana Tkachuk
Adjudicator

Introduction

1. Hearing was called at 1:58 p.m. on 9-May-2024.
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 her 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 notice of the 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 she has been properly served. The landlord’s representative submitted an affidavit with their application stating that they had served the tenant with the notice of hearing via prepaid registered mail, tracking number [REDACTED] on 10-April-2024 (LL#1). In accordance with the *Residential Tenancies Act, 2018* once the registered mail is sent, it is considered served after 5 days. 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 her absence.
5. There is a written month to month rental agreement which commenced on 1-May-2012. Rent is \$915.00 per month due on the first of each month. A security deposit of \$575.00 was paid on 1-May-2012 and is in the landlord’s possession.
6. The landlord’s representative amended the application to decrease rent paid from \$329.00 as per application to \$289.00. The landlord’s representative deleted the claim for late fees and returned payment charges from the application as those amounts were included in the rental ledger. The security deposit will be applied against any monies owed.

Issues before the Tribunal

7. The landlord is seeking:
 - An Order for Vacant Possession of the rented premises.
 - Rent paid \$289.00
 - Hearing expenses \$34.90
 - Security deposit to be applied against monies owed \$575.00.

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 in this decision is Section 12-1 of the *Residential Tenancies Policy Manual: Fees*.

Issue # 1: Vacant Possession of the Rented Premises

Relevant Submissions:

10. The landlord's representative submitted a termination notice under Section 19: Notice where failure to pay rent. The notice is signed and dated for 13-March-2024 to vacate on 26-March-2024 (LL#2). The landlord's representative stated that the termination notice was posted on the tenant's door on the 14-March-2024.

Landlord's Position:

11. The landlord's representative testified that rent has continuously been in arrears since October-2023, and she is seeking rent to be paid in full.

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, 26-March-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 premises on 26-March-2024.

Decision

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

Issue # 2: Rent paid \$289.00

Relevant Submission

16. The landlord's representative testified that rent is outstanding in the amount of \$289.00 up to the end of May-2024. The landlord's representative submitted a copy of the rental ledger to support the claim (LL#3). See breakdown of ledger below:

| Rental Ledger 2024-0277-NL | | | |
|----------------------------|----------|-----------|-----------|
| Date | Action | Amount | Total |
| April 30, 2024 | Balance | | -\$362.00 |
| May 1, 2024 | Rent due | \$915.00 | \$553.00 |
| May 1, 2024 | Payment | -\$264.00 | \$289.00 |

Landlord's Position

17. The landlord's representative testified that rent is outstanding in the amount of \$289.00. 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 May as this tribunal does not consider future rent (see below). I find that the tenant is not responsible for any outstanding rent up to the hearing date 9-May-2024. See amended ledger below:

| Amended Ledger 2024-0277-NL | | | |
|-----------------------------|----------|-----------|-----------|
| Date | Action | Amount | Total |
| April 30, 2024 | Balance | | -\$362.00 |
| May 1 - 9, 2024 | Rent due | \$270.00 | -\$92.00 |
| May 1, 2024 | Payment | -\$264.00 | -\$356.00 |

Daily rate: $\$915 \times 12 \text{ mths} = \$10,980$
 $\$10,980 / 366 \text{ days} = \30 per day

20. The daily rate has been calculated at \$30.00 per day. In the event that the tenant is still in the unit after 19-May-2024, the tenant shall pay a daily rate of \$30.00 as calculated above due to the credit balance of \$356.00.

Decision

21. The landlord's claim for rent does not succeed, however if the tenant is still in the unit after 19-May-2024, the daily rate of \$30.00 shall be applied.

Issue # 3: Hearing expenses \$34.90.

Analysis

22. Section 12-1 of the *Residential Tenancies Policy Manual* states:

Recovery of Fees

Application fees for adjudication of a dispute in excess of the security deposit is allowable and other allowable hearing expenses include the cost of postal fees to serve a claim.

23. The landlord paid \$20.00 for the application fee and \$14.90 for registered mail and is seeking reimbursement. The landlord submitted a copy of the receipts to support the claim (LL#4). As the landlord's award does not exceed the security deposit, the filing fee will not be awarded. However, the other hearing expenses in the amount of \$14.90 shall be awarded.

Decision

24. The landlord's claim for hearing expenses succeeds in the amount of \$14.90.

Issue # 3: Security deposit applied against monies owed \$575.00.

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 financial losses has not been successful as per paragraph 21 and as such the security deposit does not need to be applied against any monies owed.

Decision

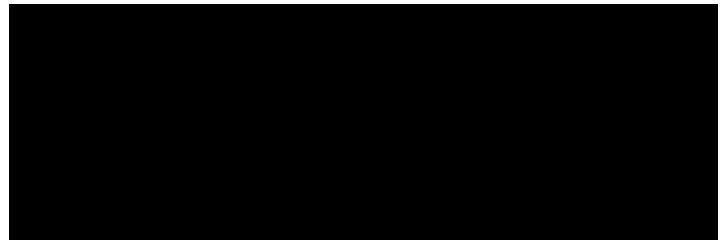
27. The security deposit shall not be applied against monies owed.

Summary of Decision

28. The tenant shall pay the landlord \$14.90 for hearing expenses.
29. The tenant shall pay a daily rate of rent beginning 20-May-2024 of \$30.00, until such time as the landlord regains possession of the property.
30. The tenant shall vacate the property immediately.
31. The landlord will be awarded an Order of Possession.
32. 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.

May 14, 2024

Date



Oksana Tkachuk
Residential Tenancies Office