

## Residential Tenancies Tribunal

Application 2024-0296-NL

Decision 24-0296-00

Oksana Tkachuk  
Adjudicator

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### Introduction

1. Hearing was called at 1:57 p.m. on 21-May-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 personally on 24-April-2024 (LL#1). The tenant confirmed receipt of the document on that date. In accordance with the *Residential Tenancies Act, 2018* this is good service.
5. There is a verbal month to month rental agreement which commenced on 15-January-2024. Rent is \$700.00 per month due on the fifteenth of each month. A security deposit of \$350.00 was paid on 15-January-2024 and is in the landlord’s possession.
6. The landlords amended the application to increase rent from \$700.00 to \$2100.00 to include the months of April and May. 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 \$2100.00
  - Late fees \$75.00
  - Hearing expenses \$20.00
  - Security deposit to be applied against monies owed \$350.

## 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 and sections of the *Residential Tenancies Policy Manual*: Section 12-001: *Costs*, and Section 02-004: *Deposits, Payments and 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 21-March-2024 and was served personally, with a termination date of 1-April-2024 (LL#2).

#### Landlord's Position:

11. The landlords testified that they had a verbal rental agreement and submitted a copy of written rental agreement to the tenant, but he refused to sign it. The landlords testified that they had residential tenancy relationship based on the verbal rental agreement and the tenant paid rent on time during months of January and February-2024. Rent has been in arrears since 15-March-2024, and they are seeking rent to be paid in full for March, April and May.

#### Tenant's Position:

12. The tenant refused to communicate about the termination notice and testified that the termination notice was not legal as he did not sign the rental agreement.

## Analysis

13. 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.

14. The fact that the tenant did not sign the rental agreement does not diminish the fact that there was a residential tenancy relationship in place. The tenant paid rent for two months and is still residing at the premises. The tenant was in rent arrears in excess of the 5 days when the termination notice was served. On the date of termination, 1-April-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.
15. I find that the tenant should have vacated the property by 1-April-2024.

### Decision

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

### Issue # 2: Rent paid \$2100.00

#### Relevant Submission

17. The landlords testified that rent is outstanding in the amount of \$2100.00 dating back to March-2024. The landlord submitted a copy of the rental ledger to support the claim (LL#3). See breakdown of ledger below:

Rental Ledger 2024-0296-NL			
Date	Action	Amount	Total
February 15, 2024	Balance	\$700.00	\$0.00
March 15, 2024	Rent due	\$700.00	\$700.00
April 15, 2024	Rent due	\$700.00	\$1,400.00
May 15, 2024	Rent due	\$700.00	\$2,100.00

#### Landlord's Position

18. The landlord testified that rent is outstanding in the amount of \$2100.00 for the period of 15-March-2024 to 14-June-2024. The landlord is seeking rent to be paid in full.

#### Tenant's Position

19. The tenant disputed that he owes any money to the landlords, as he claimed the unit to be uninhabitable, and he agreed that the last time he paid rent was on 15-February-2024 in the amount of \$700.00.

### Analysis

20. 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. Tenants have the right to request rent to be paid in trust in situations where they feel that the unit is uninhabitable or where repairs are required through the dispute resolution process. In this situation, the tenant held back rent without going through the proper process. I find that the tenant is responsible to pay rent for the period that he resides at the premises.

21. 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 responsible for outstanding rent from 15-March-2024 to 21-May-2024 in the amount of \$1560.65.

Amended Rental Ledger 2024-0296-NL			
Date	Action	Amount	Total
February 15, 2024	Balance	\$700.00	\$0.00
March 15, 2024	Rent due	\$700.00	\$700.00
April 15, 2024	Rent due	\$700.00	\$1,400.00
May 15-21, 2024	Rent due	\$160.65	\$1,560.65

Daily rate:  $\$700 \times 12 \text{ mths} = \$8400$   
 $\$8400 / 366 \text{ days} = \$22.95 \text{ per day}$

22. The tenant shall pay a daily rate of \$22.95 until such time as the landlord regains possession of the property.

### Decision

23. The landlord's claim for rent paid succeeds in the amount of \$1560.65.

### Issue # 3: Late fees \$75.00

#### Relevant Submissions:

24. The landlords are seeking late fees to be paid in the amount of \$75.00.

#### Landlord's Position:

25. The landlords testified that the rent was never paid since March-2024. The landlords submitted a copy of the money transfer from the tenant dated 15-February-2024 to support their claim (LL#3). The landlords testified that as the rent was never paid for March, April and May-2024, late fees are still outstanding in the amount of \$75.00.

#### Tenant's Position:

26. The tenant refused to communicate about late fees, but he testified that the last time he paid rent was 15-February-2024.

### Analysis

27. Section 15 of the *Residential Tenancies Act 2018* states: Fee to failure to pay rent:

Fee for failure to pay rent:

*15.1 Where tenant failure to pay rent for the 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.*

28. Section 02-004 *Residential Tenancies Policy Manual: Deposits, Payments and Fees* states:

*Late Fee: A fee charged by the landlord to the tenant when the tenant fails to pay rent within the time identified by the rental agreement.*

...

*Late Fees When rent is not paid on time, a landlord may charge a late fee of \$5.00 for the first day rent is in arrears and \$2.00 for each additional day that the rent remains in arrears in any consecutive number of rental periods up to a maximum of \$75.00 (s. 15.(1))*

29. In accordance with Section 02-004 *Residential Tenancies Policy Manual* as stated above, the tenant is required to pay late fees for the period of 16-February to the 21-May-2024 in the amount of \$75.00.

### **Decision**

30. The landlord's claim for late fees succeeds in the amount of \$75.00.

### **Issue # 4: Hearing expenses \$20.00**

#### Relevant Submissions:

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

### **Analysis**

32. According to Section 12-001 of the *Residential Tenancies Policy Manual: Costs*, the application fee of \$20.00 will be awarded to the landlord.

### **Decision**

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

### **Issue # 5: Security deposit applied against monies owed \$350.**

#### Relevant Submissions:

34. The landlords testified that the security deposit was collected in the amount of \$350.00 on 15-January-2024. The landlords testified that they want the security deposit to be applied against money owed by the tenant.

### **Analysis**

35. 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).

36. The landlord's claim for losses has been successful as per paragraphs 16, 23, 29 and 33 and as such the security deposit shall be applied against monies owed.

### Decision

37. The security deposit shall be applied against monies owed.

### Summary of Decision

38. The tenant shall pay the landlords \$1282.70 as follows:

Rent .....	\$1560.65
Late fees .....	75.00
Hearing expenses .....	20.00
Less security deposit .....	350.00
Total.....	<u>\$1305.65</u>

39. The tenant shall pay a daily rate of rent beginning 22-May-2024 of \$22.95, until such time as the landlords regain possession of the property.

40. The tenant shall vacate the property immediately.

41. 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.

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

May 29, 2024

Date



Oksana Tkachuk, Adjudicator  
Residential Tenancies Office