

Residential Tenancies Tribunal

Application 2024-0376-NL

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:15 a.m. on 12-June-2024.
2. The applicant, [REDACTED], represented by [REDACTED] and [REDACTED] [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as “the tenants” did not attend.

Preliminary Matters

4. The tenants were not present or represented at the hearing and I was unable to reach them 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 hearing 10 clear days prior to the hearing date and, where the respondents fail to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent’s absence so long as they have been properly served. The landlord submitted 2 affidavits with their application stating that they had served the tenants with the notice of hearing via prepaid registered mail to the residential address ([REDACTED] and [REDACTED]) on 14-May-2024 (LL#1). Canada Post indicates that the mail was not retrieved. In accordance with the *Residential Tenancies Act*, 2018 mail is considered served 5 days after it is sent and as such, this is good service. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.
5. There is a written month-to-month rental agreement which commenced on 1-November-2018. Rent is \$1120.00 per month due on the first of each month. A security deposit of \$270.00 was transferred to the landlord when they assumed the property and is in the landlord’s possession.

6. The landlord amended the application to increase rent paid from \$970.00 as per the application to \$2010.00 which includes NSF fees and to seek hearing expenses.

Issues before the Tribunal

7. The landlord is seeking:
 - An Order for Vacant Possession of the rented premises.
 - Rent paid and NSF fees \$2010.00
 - Hearing expenses \$52.05
 - Security deposit applied against monies owed \$270.00

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 are the following sections of the *Residential Tenancies Policy Manual*: Section 2-4: Deposits, Payments and Fees and Section 12-1: Recovery of Costs.

Issue # 1: Vacant Possession of the Rented Premises

Relevant Submissions:

10. The landlord submitted a termination notice on a *Landlord's Notice to Terminate Early – Cause* form under Section 19: Notice where failure to pay rent. The notice is signed and dated for 15-April-2024, with a termination date of 28-April-2024 (LL#2).

Landlord's Position:

11. The landlord's representative testified that rent has been in arrears since 1-March-2024, and although payments have been made the tenant continued to carry a negative balance resulting in an outstanding amount of \$2010.00 which includes NSF charges as well.

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. Rent is required to be paid by a tenant for the use or occupancy of a residential premises.

The tenant was in rent arrears in excess of the 5 days when the termination notice was served. On the date of termination, 28-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.

14. I find that the tenant should have vacated the property by 28-April-2024.

Decision

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

Issue # 2: Rent Paid & NSF Fees \$2010.00

Relevant Submission

16. The landlord's representative testified that rent and NSF fees are outstanding in the amount of \$2010.00 dating back to March 2024. The landlord submitted a copy of the rental ledger to support their claim (LL#3). See breakdown of ledger below:

Rental Ledger 2024-0376-NL			
Date	Action	Amount	Total
February 29, 2024	Balance	\$0.00	
March 1, 2024	Rent due	\$970.00	\$970.00
March 8, 2024	Payment	-\$600.00	\$370.00
March 8, 2024	Returned Cheque	\$600.00	\$970.00
March 8, 2024	NSF charge	\$50.00	\$1,020.00
March 22, 2024	Payment	-\$800.00	\$220.00
March 27, 2024	Payment	-\$170.00	\$50.00
April 1, 2024	Rent due	\$970.00	\$1,020.00
April 5, 2024	Payment	-\$600.00	\$420.00
April 5, 2024	cheque returned	\$600.00	\$1,020.00
April 5, 2024	NSF charge	\$50.00	\$1,070.00
April 19, 2024	Payment	-\$970.00	\$100.00
April 19, 2024	cheque returned	\$970.00	\$1,070.00
April 19, 2024	NSF charge	\$50.00	\$1,120.00
May 1, 2024	Rent due	\$970.00	\$2,090.00
May 3, 2024	Payment	-\$1,200.00	\$890.00
June 1, 2024	Rent due (increase due)	\$1,120.00	\$2,010.00

Landlord's Position

17. The landlord's representative testified that rent and NSF fees combined are outstanding in the amount of \$2010.00 for the period of 1-March to 30-June-2024. The landlord is seeking rent and fees to be paid in full.

Analysis

18. Section 2-4 of the *Residential Tenancies Policy* states:

NSF Fee

When a tenant pays rent to a landlord by cheque that does not clear and is returned to the landlord by the bank or other financial institution, the landlord may charge the tenant a fee equal to the amount of the fee charged to the landlord by the bank for returned (bounced) cheque.

19. The rental ledger is amended to show a daily rate for June as this tribunal does not consider future rent (see below). I find that the tenants are responsible for outstanding rent and NSF fees for the period of 1-March to 12-June in the amount of \$1330.64.

Amended Ledger 2024-0376-NL			
Date	Action	Amount	Total
February 29, 2024	Balance	\$0.00	\$0.00
March 1, 2024	Rent due	\$970.00	\$970.00
March 8, 2024	Payment	-\$600.00	\$370.00
March 8, 2024	Returned Cheque	\$600.00	\$970.00
March 8, 2024	NSF charge	\$50.00	\$1,020.00
March 22, 2024	Payment	-\$800.00	\$220.00
March 27, 2024	Payment	-\$170.00	\$50.00
April 1, 2024	Rent due	\$970.00	\$1,020.00
April 5, 2024	Payment	-\$600.00	\$420.00
April 5, 2024	cheque returned	\$600.00	\$1,020.00
April 5, 2024	NSF charge	\$50.00	\$1,070.00
April 19, 2024	Payment	-\$970.00	\$100.00
April 19, 2024	cheque returned	\$970.00	\$1,070.00
April 19, 2024	NSF charge	\$50.00	\$1,120.00
May 1, 2024	Rent due	\$970.00	\$2,090.00
May 3, 2024	Payment	-\$1,200.00	\$890.00
June 1-12, 2024	Rent due (increase applied)	\$440.64	\$1,330.64

Daily rate: \$1120.00 x 12 mths = \$13440
\$13440 / 366 days = \$36.72 per day

20. The tenants shall pay a daily rate of \$36.72 until such time as the landlord regains possession of the property.

Decision

21. The landlord's claim for rent and NSF fees succeeds in the amount of \$1330.64.

Issue # 3: Hearing expenses \$52.05

22. The landlord paid an application fee of \$20.00 to *Residential Tenancies* and also incurred postal fees in the amount of \$32.05. The landlord provided a copy of the receipts (LL#4).

23. In accordance with Section 12-1 of the *Residential Tenancies Policy Manual*: Recovery of Fees, claimable costs may include the filing fee and any costs incurred in serving the other party with the application or evidence, such as registered mail. As the landlord's claim has been successful, the tenants shall pay the hearing expenses.

Decision

24. The landlord's claim for hearing expenses succeeds in the amount of \$52.05.

Issue # 4: Security deposit applied against monies owed \$270.00

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 2018 to 2023 was 0% and is currently 1% for 2024.

Decision

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

Summary of Decision

28. The tenants shall pay the landlord \$1111.47 as follows:

Rent paid & NSF fees.....	\$1330.64
Hearing expenses.....	52.05
Less Security deposit & interest.....	\$271.22

Total..... **\$1111.47**

29. The tenants shall pay a daily rate of rent beginning 13-June-2024 of \$36.72, until such time as the landlord regains possession of the property.

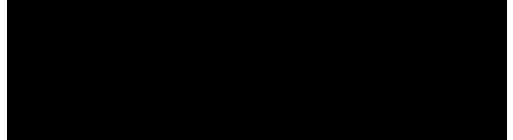
30. The tenants shall vacate the property immediately.

31. The tenants 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.

June 26, 2024

Date


Pamela Pennell, Adjudicator
Residential Tenancies Office