

## **Residential Tenancies Tribunal**

Application 2024-0415-NL

Pamela Pennell  
Adjudicator

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### **Introduction**

1. Hearing was called at 1:56 p.m. on 26-June-2024.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, attended the hearing.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant”, attended the hearing.

### **Preliminary Matters**

4. The landlord submitted 2 affidavits with his application stating that he had served the tenant with the notice of hearing and the notice of rescheduled hearing electronically on 7-June-2024 and 21-June-2024 respectively (LL#1). The respondent confirmed receiving both documents on those dates. In accordance with the *Residential Tenancies Act, 2018* this is good service.
5. There is a written month to month rental agreement which commenced on 1-December-2023. The property is a quadplex and the respondent stayed on the second floor with a shared common area. Rent is currently \$1195.00 per month, due on the first and the fifteenth of each month. A security deposit of \$895.00 was paid on 24-November-2023 and is in the landlord’s possession.
6. The landlord amended the application to increase *Other (fees)* from \$370.00 as per the application to \$475.00 and the disposition of the *security deposit* will be dealt with in this decision.

### **Issues before the Tribunal**

7. The landlord is seeking:
  - An order for vacant possession of the rented premises
  - Rent and late fees paid \$2463.50
  - *Other (fees)* \$475.00
  - Security deposit applied against monies owed \$895.00

## 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 15: Fee for failure to pay rent and Section 24; Notice where tenant contravenes peaceful enjoyment and reasonable privacy. Also, relevant and considered 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 Rental Premises

#### Relevant Submissions

10. The landlord submitted a copy of the termination notice that was given on a *Landlord's Notice to Terminate Early – Cause* form (LL#2). The notice was issued to the tenant on 17-April-2024 under Section 24; Notice where tenant contravenes peaceful enjoyment and reasonable privacy to vacate on 23-April-2024.

#### Landlord's Position

11. The landlord testified that the tenant has interfered with the peaceful enjoyment and reasonable privacy of the other tenants in the quadplex. The landlord stated that he has witness affidavits and witnesses ready to call into the hearing.

#### Tenant's Position

12. The tenant did not dispute the termination notice in any manner, nor did he dispute that he has been interfering with the peaceful enjoyment of the other tenants. The tenant stated that he will be vacating the unit on the 1<sup>st</sup> of July.

#### **Analysis**

13. The termination notice was given on 17-April-2024 under Section 24; Notice where tenant contravenes peaceful enjoyment and reasonable privacy to vacate on 23-April-2024. The notice meets the requirements of the *Act* to move out not less than 5 days after the notice has been served. I find that the termination notice is a valid notice.
14. I find that as the tenant did not dispute the landlord's claim that he was interfering with the peaceful enjoyment of the other tenants, it was not necessary for the landlord to prove his case and as such, I find that the tenant shall vacate the premises immediately.

#### **Decision**

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

### Issue # 2: Rent and Late Fees paid \$2463.50

#### Relevant Submission

16. The landlord testified that rent is outstanding in the amount of \$2388.50 for the months of May and June and he submitted a copy of the rental ledger to support the claim (LL#3). See breakdown of rental leger below:

2024-04-17		597.50	e-transfer	-1.50	597.50	-1.50
2024-05-01	1,195.00		May 2024 rent, no payment received as of May 8	1,193.50	0.00	1,193.50
2024-06-01	1,195.00		June 2024 rent due if tenant has not vacated	2,388.50	0.00	2,388.50

### Landlord's Position

17. The landlord testified that rent has been in arrears since April 2024, and he is seeking rent to be paid in full up to the end of June in the amount of \$2388.50. The landlord also stated that he is seeking the maximum late fees allowable in the amount of \$75.00 for a total of \$2463.50.

### Tenant's Position

18. The tenant did not dispute that he owes rent for the months of May and June, nor did he dispute the late fee charge.

### **Analysis**

19. Section 15 of the *Residential Tenancies Act, 2018* states:

#### **Fee for failure to pay rent**

**15. (1) Where a tenant does not pay rent for a 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.**

The minister has prescribed the following:

*Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed*

*(a) \$5.00 for the first day the rent is in arrears, and*

*(b) \$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00.*

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

#### **Deposits, Payments and Fees**

*When rent is not 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.*

21. 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 and when rent is in arrears, the landlord can charge a late fee as stated above.

22. 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 tenant is responsible for outstanding rent from 1-May-2024 to 26-June-2024 in the amount of \$2212.18 and late fees in the amount of \$75.00.

Amended Ledger 2024-0415-NL			
Date	Action	Amount	Total
April 30, 2024		Balance	-\$1.50
May 1, 2024	Rent due	\$1,195.00	\$1,193.50
June 1-26, 2024	Rent due	\$1,018.68	\$2,212.18

Daily rate: \$1195 x 12 mths = \$14340  
\$14340 / 366 days = \$39.18 per day

23. The tenant shall pay a daily rate of \$39.18 until such time as the landlord regains possession of the property.

### Decision

24. The landlord's claim for rent and late fees succeeds in the amount of \$2287.18.

### Item # 3: Other (fees) \$475.00

#### Landlord's Position

25. The landlord testified that it cost \$130.00 to have 4 affidavits witnessed and it costs \$20.00 for the filing fee. The landlord submitted a copy of receipts to support the claim (LL#4). In addition, the landlord is seeking to be reimbursed for any future costs associated with certification and Sheriff fees. The landlord stated that he received a quote from the *Office of the High Sheriff* in the amount of \$325.00.

### Analysis

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

#### Recovery of Costs

In general, claimable costs may include the following:

- a. The \$20.00 filing fee
- b. The costs incurred in the preparation for a hearing
- c. The cost incurred in serving the other party with the application or with the evidence, or serving a witness with a subpoena, such as
  - Process server
  - Registered mail or Xpresspost
- d. The costs of having an Order of Possession enforced after the hearing.

27. In accordance with Section 12-1 as stated above, I find that the filing fee and the affidavit fees are acceptable and as such, the tenant shall reimburse the landlord in the amount of 150.00. As for the potential future sheriff fees, I find that the tenant shall pay to the landlord any costs charged by the *Office of the High Sheriff* should the landlord be required to have the Sheriff enforce the Order of Possession.

### Decision

28. The landlord's claim for Other (fees) succeeds in the amount of \$150.00 and any additional Sheriff fees from the *Office of the High Sheriff*.

**Item # 4: Security deposit applied against monies owed \$895.00**

29. 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).*

30. The landlord's claim has been successful as per paragraphs 24 and 28 above and as such, the security deposit shall be applied against monies owed.

31. Pursuant to the *Residential Tenancies Act, 2018* the landlord must pay interest on a security deposit to a tenant(s) 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**

32. The tenant's claim to have the security deposit applied against monies owed succeeds.

**Summary of Decision:**

33. The tenant shall pay the landlord \$1537.80 as follows:

Rent and late fees .....	\$2287.18
Other (fees) .....	150.00
<b>Less: Security deposit &amp; interest .....</b>	<b>899.38</b>

Total .....\$1537.80

34. The tenant shall pay a daily rate of rent beginning 27-June-2024 of \$39.18 per day, until such time as the landlord regains possession of the property.

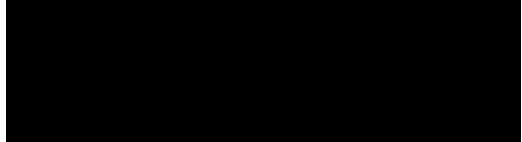
35. The tenant shall vacate the property immediately.

36. 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.

37. The landlord will be awarded an Order of Possession.

July 5, 2024

Date

  
Pamela Pennell, Adjudicator  
Residential Tenancies Office