

## **Residential Tenancies Tribunal**

Application 2024-0427-NL

Oksana Tkachuk  
Adjudicator

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### **Introduction**

1. Hearing was called at 9:05 a.m. on 26-June-2024.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondent, [REDACTED], represented by [REDACTED], hereinafter referred to as “the tenant” attended the teleconference.

### **Preliminary Matters**

4. The landlord testified that he had served the tenant with the notice of hearing electronically and personally on 18-May-2024. The tenant agreed that he received the notice of hearing. In accordance with the *Residential Tenancies Act, 2018* this is considered good service and we proceeded with the hearing.
5. There was a written month to month rental agreement between the landlord’s ex- girlfriend and the tenant, which commenced on 16-August-2023. The landlord testified that he was incarcerated and was not aware of the tenancy at that time. A new written month to month agreement was signed by the landlord’s agent on his behalf with the tenant on 2-October-2023. Rent is \$1000.00 per month due on the first of each month. A security deposit of \$600.00 was paid to the landlord’s ex-girlfriend on 16-August-2023 and according to the landlord is not in his possession.
6. The landlord amended the application to include hearing expenses 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 paid \$5135.00
  - Hearing expenses \$20.00
  - Security deposit to be applied against monies owed \$600.00.

## 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*: Recovery of Costs.

### Issue # 1: Vacant Possession of Rented Premises

#### Relevant Submission

10. The landlord submitted a termination notice under Section 19: *Notice where failure to pay rent*. The notice is signed and dated for 10-May-2024 to vacate on 31-May-2024 (LL#1). The landlord stated that the termination notice was posted on the tenant's door on the 14-March-2024.

#### Landlord's Position:

11. The landlord testified that rent has continuously been in arrears since October-2023, and he is seeking vacant possession of the rented premises.

#### Tenant's Position:

12. The tenant's representative did not dispute that rent was in arrears however he did dispute the amount sought by the landlord.

## 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 tenant was in rent arrears in excess of the 5 days when the termination notice was served. On the date of termination, 31-May-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 premises on 31-May-2024.

### Decision

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

### Issue # 2: Rent Paid \$5135.00

#### Relevant Submission

17. The landlord testified that rent is outstanding for the period of October 2023 to June 2024, and he testified that he is unsure of the exact amount. The landlord stated that based on his records, the outstanding amount could be approximately \$5135.00. The landlord submitted a rental ledger to support the claim (LL#2).

#### Rent Ledger

Landlord Name: [REDACTED] Start Date of Tenancy: Unknown/Insure.  
Tenant Name: [REDACTED] Security Deposit Paid: \$ 600/Unknown/part  
Rental Unit Address: [REDACTED] Date Security Deposit Paid: to the  
Unknown & exactly

Date	Transaction Description	Amount Due	Amount Paid	Balance
Oct 1/23	Rent	1000	—	1000
Nov 1/23	“	1000	—	2000
Dec 1/23	“	1000	280	2714
Jan 1/24	“	1000	686	2928
Feb 1/24	“	1000	671	3257
March 1/24	“	1000	536	3721
April 1/24	“	1000	586	4135
May 1/24	“	1000	—	5135

#### Landlord's Position

18. The landlord stated that he did not give permission to his ex-girlfriend to rent his unit and testified that when he became aware of the situation in October 2023, he had his agent sign a new rental agreement on his behalf. While incarcerated, the landlord's agent collected the rent and the landlord stated that he is unaware of the exact amount of the outstanding rent but calculates it to be approximately \$5135.00. The landlord is seeking rent to be paid in full.

#### Tenant's Position

19. The tenant's representative did not dispute that rent has been in arrears, however he did dispute the amount sought by the landlord. The tenant's representative stated that the correct amount owing is \$3077.00, and he provided copies of electronic payments to support the claim (TT#1).

## 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. The parties could not agree on the exact amount of rent owing thus the exhibits entered into evidence by the tenant were analyzed to determine the amount owing. The tenant's representative testified that rent was paid in full for October 2023 and the landlord was unable to dispute that as he never received any payments. \$286.00 was added to the rental ledger each month as a payment as that amount was paid each month from Income Support. Payment for the month of June is amended to show a daily rate for that month as this tribunal does not consider future rent (see below). I find that the tenant is responsible for outstanding rent for the period of October 1, 2023 to June 26, 2024 in the amount of \$2,964.26. See amended ledger below:

Amended Rental Ledger 2024-0427-NL			
Date	Action	Amount	Total
October 31, 2023		Balance	\$0.00
November 1, 2023	Rent due	\$1,000.00	\$1,000.00
November 2, 2023		Payment	-\$986.00
December 1, 2023	Rent due	\$1,000.00	\$1,014.00
December 1, 2023		Payment	-\$286.00
January 1, 2024	Rent due	\$1,000.00	\$1,728.00
January 2, 2024		Payment	-\$686.00
February 1, 2024	Rent due	\$1,000.00	\$2,042.00
February 1, 2024		Payment	-\$636.00
March 1, 2024	Rent due	\$1,000.00	\$2,406.00
March 2, 2024		Payment	-\$836.00
April 1, 2024	Rent due	\$1,000.00	\$2,570.00
April 30, 2024		Payment	-\$486.00
May 1, 2024	Rent due	\$1,000.00	\$3,084.00
May 2, 2024		Payment	-\$486.00
June 1-26, 2024	Rent due	\$852.26	\$3,450.26
June 3, 2024		Payment	-\$486.00
			\$2,964.26

Daily rate: \$1000 x 12 mths = \$12 000  
\$12 000 / 366 days = \$32.78 per day

21. The tenant shall pay a daily rate of \$32.78 per day as calculate above, until such time as the landlord regains possession of the unit.

## Decision

22. The landlord's claim for rent succeeds in the amount of \$2964.26.

## Issue # 3: Hearing expenses \$20.00.

## Analysis

23. Section 12-1 of the *Residential Tenancies Policy* states that in general, claimable costs may include the filing fee. The landlord paid \$20.00 for the application and is seeking

reimbursement. The landlord submitted a copy of the receipt to support the claim (LL#4). As the landlord's claim has been successful, the tenant shall pay the hearing expenses.

## Decision

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

### **Issue # 4: Security deposit applied against monies owed \$600.00.**

## 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 testified that the security deposit of \$600.00 is not in his possession as it was initially paid to his ex-girlfriend, however the new rental agreement that was signed on 2-October -2024 states that a security deposit was paid on 16-August-2023. I accept that the tenant paid a security deposit, and it shall be applied against any monies owed.

27. The landlord's claim for financial losses has been successful as per paragraphs 19 and 21 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 2023 was 0% and is currently 1% for 2024.

## Decision

28. The security deposit plus applicable interest shall be applied against monies owed.

## Summary of Decision

29. The tenant shall pay the landlord \$2381.33 as follows:

Rent paid .....	\$2964.26
Hearing expenses .....	20.00
<b>Less: security deposit &amp; interest.....</b>	<b>602.93</b>
<b>Total.....</b>	<b>\$2381.33</b>

30. The tenant shall pay a daily rate of rent beginning 27 June-2024 of \$32.78, until such time as the landlord regains possession of the property.

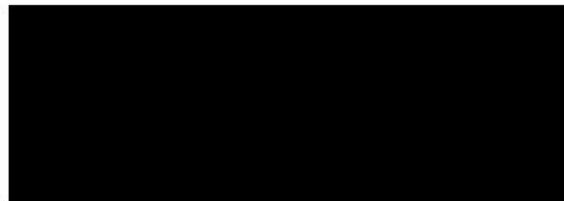
31. The tenant shall vacate the property immediately.

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.

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

July 12, 2024

Date



Oksana Tkachuk, Adjudicator  
Residential Tenancies Office