

Residential Tenancies Tribunal

Application 2024-0486-NL

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:57 p.m. on 10-July-2024.
2. The applicant, [REDACTED], represented by [REDACTED] and [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 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 submitted an affidavit with their application stating that they had served the tenant with the notice of hearing via prepaid registered mail ([REDACTED]) on 17-June-2024 (LL#1). In accordance with the *Residential Tenancies Act, 2018* registered mail is considered served 5 days after it is sent. 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 term rental agreement which commenced on 1-October-2015. Rent is \$865.00 per month due on the first of each month. A security deposit of \$382.50 was paid in October 2015 and is in the landlord's possession.
6. The landlord amended the application to increase *rent paid* from \$175.00 as per the application to \$477.00 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 \$477.00
 - Late fees \$75.00
 - Hearing expenses \$36.00
 - Security deposit applied against monies owed \$382.50

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

Issue # 1: Vacant Possession of the Rented Premises

Relevant Submissions:

10. The landlord submitted a termination notice under Section 19: Notice where failure to pay rent. The notice is signed and dated for 13-May-2024, with a termination date of 26-May-2024 (LL#2).

Landlord's Position:

11. The landlord's representatives testified that rent was in arrears at the time the termination notice was given on 13-May and was still in arrears on the termination date of 26-May. The landlord is seeking to have the tenant vacate the premises.

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-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.

14. I find that the tenant should have vacated the property by 26-May-2024.

Decision

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

Issue # 2: Rent Paid \$477.00

Relevant Submission

16. The landlord's representatives testified that rent is outstanding in the amount of \$477.00 for the month of July 2024. The landlord submitted a copy of the rental ledger to support the claim (LL#3). See breakdown of ledger below:

Rental Ledger 2024-0486-NL			
Date	Action	Amount	Total
April 30, 2024		Balance	-\$690.00
May 1, 2024	Rent due	\$865.00	\$175.00
May 31, 2024		Payment	-\$714.00
June 1, 2024	Rent due	\$865.00	\$326.00
June 28, 2024		Payment	-\$714.00
July 1, 2024	Rent due	\$865.00	\$477.00

Landlord's Position

17. The landlord's representative testified that rent is outstanding in the amount of \$477.00 for the month of July 2024. 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 July as this tribunal does not consider future rent (see below). I find that the tenant is not responsible for outstanding rent from 1-July to 10-July as there is a credit on the account. See copy of amended ledger below:

Amended Rental Ledger 2024-0486-NL			
Date	Action	Amount	Total
April 30, 2024	Balance		-\$690.00
May 1, 2024	Rent due	\$865.00	\$175.00
May 31, 2024	Payment	-\$714.00	-\$539.00
June 1, 2024	Rent due	\$865.00	\$326.00
June 28, 2024	Payment	-\$714.00	-\$388.00
July 1-10	Rent due	\$283.60	-\$104.40

Daily rate: \$865 x 12 mths = \$10380
\$10380 / 366 days = \$28.36 per day

20. The landlord's rental ledger shows that the tenant was not in rental arrears at the time of the hearing and as such, the tenant is not responsible for rent to be paid up to the hearing date of 10-July-2024.
21. The tenant shall pay a daily rate of \$28.36 after the rent credit is utilized (after 14-July) until such time as the landlord regains possession of the property.

Decision

22. The landlord's claim for *rent paid* up to the hearing date does not succeed.
23. The tenant shall pay the landlord a daily rate of \$28.36 after 14-July if the tenant is still residing in the unit and continue to pay the daily rate of \$28.36 until such time as the landlord regains possession of the property.

Issue # 3: Late fees \$75.00

24. 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*

25. *Residential Tenancies Policy 2-4; Deposits, Payments and Fees* states:

Late payment fee:

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.

26. The landlord was able to show that rent was continuously late and late fees have not been charged. In accordance with Section 2-4 of the Policy as stated above, I find that that the maximum late fee of \$75.00 as prescribed by the Minister is allowed.

Decision

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

Issue # 4: Hearing expenses \$36.00

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

29. Section 12-1 of the *Residential Tenancies Policy* states that in general, claimable costs may include the filing fee and any costs incurred in serving the other party. As the landlord's claim has been successful, I find that the tenant shall pay the hearing expenses.

Decision

30. The landlord's claim for hearing expenses succeeds in the amount of \$36.00.

Issue # 5: Security deposit applied against monies owed \$382.50

Analysis

31. 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).

32. The landlord's claim for losses has been successful as per paragraphs 23, 27 and 30 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 from 2015 to 2023 was 0% and is currently 1% for 2024.

Decision

33. The landlord's claim for security deposit and interest (\$384.62) to be applied against monies owed succeeds.

Summary of Decision

34. The tenant shall pay the landlord \$0.00 as follows:

Rent	\$0.00
Late fees	75.00
Hearing expenses.....	36.00
Less partial Security deposit.....	<u>\$111.00</u>
Total.....	<u>\$0.00</u>

35. The tenant shall pay a daily rate of rent beginning 15-July-2024 of \$28.36, until such time as the landlord regains possession of the property.

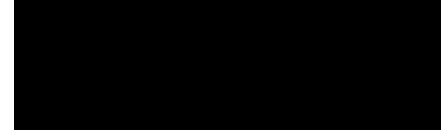
36. The tenant shall vacate the property immediately.

37. 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.

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

July 17, 2024

Date



Pamela Pennell, Adjudicator
Residential Tenancies Office