

Residential Tenancies Tribunal

Application 2024-0555-NL

Oksana Tkachuk
Adjudicator

Introduction

1. Hearing was called at 1:49 p.m. on 23-July-2024.
2. The applicant, [REDACTED], represented by [REDACTED], hereinafter referred to as "the landlord" attended by teleconference.
3. The respondents, [REDACTED], represented by authorized representative [REDACTED] (TT#1); and [REDACTED], represented by authorized representative [REDACTED] (TT#2), hereinafter referred to as "the tenants" attended via teleconference.

Preliminary Matters

4. The landlord's representative submitted an affidavit with their application stating that they had served the tenants with the notice of the hearing personally on 9-July-2024 (LL#1). The tenants agreed to receiving notice of the hearing on that date. 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 16-May-2019. Rent is \$1418.00 per month due on the first of each month. A security deposit of \$300.00 was collected on 21-May-2019.
6. The landlord amended the application to decrease the total amount tenants owe from \$9374.00 as per application to \$7522.00 including rent for the month July.

Issues before the Tribunal

7. The landlord is seeking:
 - An Order for Vacant Possession of the rented premises;
 - Rent paid \$7522.00;
 - Hearing expenses \$20.00;
 - Security deposit to be applied against monies owed \$300.00.

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 19: Notice where failure to pay rent and Section 14: Security deposit. 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 the Rented Premises

Relevant Submissions:

10. The landlord's representative submitted a copy of the termination notice under Section 19: Notice where failure to pay rent. The notice is signed and dated 27-May-2024 and was served by sticking it to the front door of the rental unit on that day, with a termination date of 9-June-2024 (LL#2).

Landlord's Position:

11. The landlord's representative stated that rent has been in arrears since January-2023. The landlord's representative stated that the total amount the tenants owed when the termination notice was issued on 27-May-2024 was \$9654.00.

Tenant's position:

12. The tenants did not dispute that rent is in arrears, however, their representatives explained that due to their limited vocabulary and other health issues, the tenants did not understand what was required of them with regards to supplying the landlord with proof of income. Tenant's representatives stated that the tenants are actively working and making payments against monies owed and improving their skills to better manage such situations and prevent them from occurring in the future, as they are afraid of losing their housing.

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. I accept that the tenants had difficulty understanding what was required of them with regards to supplying the landlord with their income situation. However, in accordance with Section 19 of the *Act* as stated above, when rent is overdue, the landlord has the right to give the tenant a termination notice with cause. The tenants were in rental arrears in excess of 5 days when the termination notice was served. On the date of termination, 9-June-2024 the tenants were still in arrears. The termination notice meets the requirements of the *Act* and is a valid notice.

15. I find that the tenants should have vacated the property by 9-June-2024.

Decision

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

Issue # 2: Rent Paid \$7522.00

Landlord's Position

17. The landlord's representative stated that the amount of rent depends on the income of the tenants and Government income support. The landlord's representative testified that as the tenants had a changing income that was not reported to the landlord correctly, they had to go back and reevaluate amount of rent based on combined income as follows: in August-2022 rent was \$598.00, since January-2023 rent was \$1418.00, in January-2024 rent was \$1002.00, since February-2024 rent was \$1004.00, since June-2024 rent is \$1418.00. The landlord's representative testified that since they reevaluate rent it has been in arrears since January-2023. The landlord's representative stated that the total amount the tenants owed when the termination notice was issued on 27-May-2024 was \$9654.00. The landlord's representative has indicated that, following tenant's payments in June and July, the current amount of rent owed by the tenants is \$7522.00, including the month of July. The landlord's representative submitted a rental ledger to support their claim (LL#3).

January 1, 2023	1418.00	January 10, 2023	598.00	820.00
February 1, 2023	1418.00	February 2, 2023	299.00	1,939.00
		February 9, 2023	440.00	1,499.00
		February 27, 2023	440.00	1,059.00
March 1, 2023	1418.00	March 2, 2023	299.00	2,178.00
		March 30, 2023	440.00	1,738.00
April 1, 2023	1418.00	April 4, 2023	299.00	2,857.00
		April 27, 2023	440.00	2,417.00
May 1, 2023	1418.00	May 5, 2023	375.00	3,460.00
		May 29, 2023	440.00	3,020.00
June 1, 2023	1418.00	June 5, 2023	375.00	4,063.00
		June 28, 2023	375.00	3,688.00
		June 30, 2023	440.00	3,248.00
July 1, 2023	1418.00	July 27, 2023	440.00	4,226.00
August 1, 2023	1418.00	August 25, 2023	375.00	5,269.00
		August 30, 2023	440.00	4,829.00
September 1, 2023	1418.00	September 5, 2023	375.00	5,872.00
		September 28, 2023	440.00	5,432.00
		September 29, 2023	375.00	5,057.00
October 1, 2023	1418.00	October 31, 2023	440.00	6,035.00

November 1, 2023	1418.00	November 1, 2023	375.00	7,078.00
		November 28, 2023	440.00	6,638.00
December 1, 2023	1418.00	December 20, 2023	440.00	7,616.00
January 1, 2024	1002.00	January 2, 2024	282.00	8,336.00
February 1, 2024	1004.00	February 6, 2024	1,000.00	8,340.00
		February 28, 2024	429.00	7,911.00
March 1, 2024	1004.00	March 5, 2024	400.00	8,515.00
		March 27, 2024	429.00	8,086.00
April 1, 2024	1004.00	April 26, 2024	429.00	8,661.00
May 1, 2024	1004.00	May 9, 2024	1,000.00	8,665.00
		May 30, 2024	429.00	8,236.00
June 1, 2024	1418.00			9,654.00
		June 13, 2024	2,500.00	7,154.00
		June 27, 2024	550.00	6,604.00
July 1, 2024	1418.00	July 9, 2024	500.00	7,522.00
TOTAL	27,860.00	1,716,889.00	19,740.00	7,522.00

Tenant's Position

18. The tenants did not dispute that they owe rent.

Analysis

19. 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. Payment for the month of July is amended to show a daily rate for that month as this tribunal does not consider future rent (see below). I accept the landlord's representative's testimony and I find that the tenant is responsible for outstanding rent for the period of 2023 to 23-July-2024, in the amount of \$7173.00. See amended ledger below:

Amended Rental Ledger 2024-555-NL			
Date	Action	Amount	Total
February 31, 2023	Balance		\$7,616.00
January 1, 2024	Rent due	\$1,002.00	\$8,618.00
January 2, 2024	Payment	-\$282.00	\$8,336.00
February 1, 2024	Rent due	\$1,004.00	\$9,340.00
February 6, 2024	Payment	-\$1,000.00	\$8,340.00
February 28, 2024	Payment	-\$429.00	\$7,911.00
March 1, 2024	Rent due	\$1,004.00	\$8,915.00
March 5, 2024	Payment	-\$400.00	\$8,515.00
March 27, 2024	Payment	-\$429.00	\$8,086.00
April 1, 2024	Rent due	\$1,004.00	\$9,090.00
April 26, 2024	Payment	-\$429.00	\$8,661.00
May 1, 2024	Rent due	\$1,004.00	\$9,665.00
May 9, 2024	Payment	-\$1,000.00	\$8,665.00
May 30, 2024	Payment	-\$429.00	\$8,236.00
June 1, 2024	Rent due	\$1,418.00	\$9,654.00
June 13, 2024	Payment	-\$2,500.00	\$7,154.00
June 27, 2024	Payment	-\$550.00	\$6,604.00
July 1 - 23	Rent due	\$1,069.27	\$7,673.27
July 9, 2024	Payment	-\$500.00	\$7,173.27

Daily rate: \$1418.00 x 12 mths = \$17016.00
\$17016.00 / 366 days = \$46.49 per day

20. The tenant shall pay a daily rate of \$46.49 per day as calculate above, until such time as the landlord regains possession of the unit.

Decision

21. The landlord's claim for rent succeeds in the amount of \$7173.27.

Issue # 3: Hearing expenses \$20.00.

Analysis

22. 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. As the landlord's claim has been successful, the tenant shall pay the hearing expenses.

Decision

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

Issue #4 Security deposit applied against monies owed \$300.00

Analysis

24. 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).
25. The landlord's claim for losses has been successful as per paragraphs 21 and 23 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 in 2023 was 0% and is currently 1% for 2024.

Decision

26. The landlord's claim for security deposit plus interest in the amount of \$301.69 to be applied against monies owed succeeds.

Summary of Decision

27. The tenants shall pay the landlord \$6891.58 as follows:

Rent paid	\$7173.27
Hearing expenses	20.00
Less security deposit plus interest	301.69
Total.....	\$6891.58

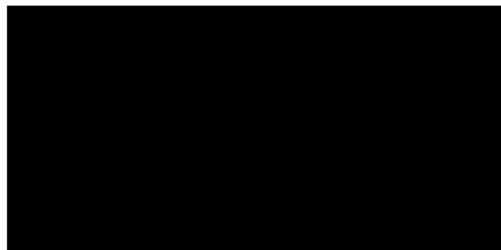
28. The tenants shall vacate the property immediately.

29. The tenants shall pay a daily rate of rent beginning 24-July-2024 of \$46.49, until such time as the landlord regains possession of the property.

30. 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.

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

July 26, 2024
Date



Oksana Tkachuk, Adjudicator
Residential Tenancies Office