

## Residential Tenancies Tribunal

Application 2024-0612-NL and 2024-0633-NL

Michael Reddy  
Adjudicator

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### Introduction

1. Hearing was held on 8-August-2024 at 8:58 am by teleconference.
2. The applicant, [REDACTED], hereinafter referred to as the tenant attended.
3. The respondent and counter-applicant, [REDACTED], hereinafter referred to as the landlord attended.

### Preliminary Matters

4. The tenant submitted an affidavit (T#1) and supporting documents with her application stating that she had served the landlord with notice of the hearing electronically on August 5, 2024. The affidavit contained incorrect information and indicated that ten clear days of service was not provided. The landlord thought he may have received the documents but was unable to confirm receipt. The landlord provided proof that he served the tenant with notice of hearing electronically (L#1) on July 19, 2024, and the tenant confirmed receipt. In accordance with the Residential Tenancies Act, 2018 the tenant did not serve properly, however the landlord had good service. As the tenant's issue of validity will be dealt with in the landlord's application for vacant possession, I proceeded with the hearing.
5. There is a written month-to-month rental agreement (L#2) which commenced on 1-February-2024. Rent is \$2750.00 per month and due on the first of each month. A security deposit of \$1375.00 was paid on 31-January-2024 and remains in the landlord's possession.
6. The landlord amended his application to increase rent from \$5500.00 as per the application to \$8250.00 to include rent for the month of August 2024.

### Issues before the Tribunal

7. The tenant is seeking:
  - Validity of termination notice

The landlord is seeking:

- An Order for Vacant Possession of the rental premises; and
- Rent paid \$8250.00

### **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* (the *Act*).
9. Also discussed and referred to in this decision are sections 14, 19, and 34 of the *Act*, and Residential Tenancies Policy 10-001.

### **Issue 1: Vacant Possession of the Rental Premises/Validity of Termination Notice**

#### Relevant Submission:

10. Both the tenant and landlord submitted a termination notice provided to the tenant electronically under Section 19: Notice where failure to pay rent. The notice is signed and dated for 20-June-2024, with a termination date of 1-July-2024 (TL#1).

#### Landlord's Position:

11. The landlord testified that rent was in arrears at the time the termination notice was issued on 20-June-2024 and was still in arrears on the termination date of 1-July-2024. The landlord is seeking to have the tenant vacate the premises. The landlord provided testimony that rent was outstanding for the month of April-2024. He testified that there had been correspondence by text / email back-and-forth between himself and the tenant demonstrating that she had tried to send the money via e-transfer for April-2024 rent, but he never received it. He attributed this to the tenant's email being 'hacked' and noted that he had contacted his bank and internet and WiFi service provider who advised him that there was nothing wrong with his accounts. He asserts that as he never received these monies, the tenant continues to owe rent for the month of April-2024.
12. The landlord further testified that since that time, rent has not been paid on time, but in installments; and rent has not been paid at all for the months of July and August. He provided a rental ledger (L#4), as reproduced below:

Date	Transaction	Amount Due	Amount Paid	Balance
1-March-2024	Rent due	\$2750	\$2750	\$0
1-April-2024	Rent due	\$2750	\$0	\$2750
1-May-2024	Rent due	\$2750	\$	\$5500
13-May-2024	Payment		\$1200	\$4300
21-May-2024	Payment		\$1550	\$2750
1-June-2024	Rent due	\$2750	\$0	\$5500
6-June-2024	Payment		\$850	\$4650

13-June-2024	Payment		\$1000	\$3650
17-June-2024	Payment		\$850	\$2800
21-June-2024	Payment		\$50	\$2750
1-July-2024	Rent due		\$2750	\$5500

#### Tenant's Position:

13. The tenant agrees that she has not paid rent for the months of July-2024 and August-2024. However, the tenant testified that she was not in arrears for rent for the month of April-2024. She stated that she had e-transferred the rent in full to the landlord's normal email on 2-April-2024 and received a request from the landlord's email address to cancel the transaction and redeposit into another email account, which she proceeded to do. She noted that when the landlord advised that he had never received the monies she filed a police report, as well as a fraud claim with her bank which was denied, and then later an appeal which was also denied. She maintains that it was the landlords account that had gotten hacked, and that she has done her part and paid the rent, regardless of whether he received it.

#### **Analysis**

14. 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.

15. The termination notice (L#3) meets all technical requirements of s.19(4) and was served in accordance with s.35. However, the question remains as to whether the tenant was in rental arrears for 5-days or more on the date that notice was provided. In making this

determination, it must first be determined whether rent monies for the month of April-2024 remain owed by the tenant.

16. Neither party disputes that the tenant had attempted to pay the rent for April-2024 and that the landlord never received the rent monies. Both parties attribute this to fraudulent activity and 'hacking' of the other parties account(s). Whether or not the parties were victim to fraudulent activity is outside the scope of the Residential Tenancies Act and can be dealt with by the appropriate institutions. However, in the context of the Residential Tenancies Act and based on the testimony and evidence in totality, on the balance of probabilities, I find that the tenant made a good-faith effort to pay the rent for the month of April-2024. The rent for the month of April-2024 is deemed to have been paid by the tenant.
17. Based on the rental ledger as reproduced in paragraph 12 above, on 20-June-2024, the tenant was in rental arrears for \$50 for June-2024. It is noted that the tenant made a payment of \$50 on 21-June-2024. As per s.19(2) of the Residential Tenancies Act, rental arrears were paid in full prior to the stated termination date of 1-July-2024, which renders the notice of termination invalid.

### **Decision**

18. The landlords claim for an order for an order for vacant position of the rental premises does not succeed.

### **Issue 2: Rent Paid \$8250.00**

#### Landlords Position:

19. The landlord testified that rent is outstanding in the amount of \$8250 for the months of April-2024, July-2024 and August-2024.

#### Tenant's Position:

20. The tenant did not dispute that she has not paid rent for July-2024 and August-2024.

### **Analysis**

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.
22. As noted in paragraph 16, the rent for the month of April-2024 is deemed to have been paid by the tenant. It is undisputed that rent monies have not been paid for July-2024 and August-2024.
23. As stated above, rent is required to be paid in full under a rental agreement and for that reason, I find that the tenant is responsible to pay the outstanding rent in full.

24. The rental ledger is amended to show a daily rate for August as this tribunal does not consider future rent beyond the date of hearing (8-August-2024).

Amended Rental Ledger				
Date	Action	Amount Due	Amount Paid	Total
1-July-2024	Rent due	\$2750.00	\$0	\$2750.00
1-8 August-2024	Rent due	\$721.28	\$0	\$3471.28

Daily rate:  $\$2750.00 \times 12 \text{ months} = \$33,000$   
 $\$33,000 / 366 \text{ days} = \$90.16 \text{ per day}$

### Decision

25. The landlord's claim for rent succeeds in the amount of \$3471.28.

### Summary of Decision

26. The termination notice dated 20-June-2024 is invalid, and the landlord's claim for vacant possession is not successful.
27. The tenant shall pay to the landlord unpaid rent up to and including August 8, 2024 in the amount of \$3471.28.

21-August-2024

Date



Michael Reddy, Adjudicator  
Residential Tenancies