

Residential Tenancies Tribunal

Application 2024-0617-NL

Oksana Tkachuk
Adjudicator

Introduction

1. Hearing was called at 9:07 a.m. on 19-August-2024.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord" attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as "the tenant" attended by teleconference.

Preliminary Matters

4. The landlord submitted an affidavit with his application stating that he had served the tenant electronically via email; [REDACTED] on 2-August-2024 (LL#1) and submitted the proof of service. In accordance with the *Residential Tenancies Act, 2018* this is good service, and we proceeded with the hearing.
5. There is a written month-to-month rental agreement which commenced on 1-May-2024. Rent is \$900.00 per month due on the first of each month. A security deposit of \$450.00 was collected on 25-April-2024 and is in landlord's possession.
6. The landlord amended the application to increase the total amount tenant owes to \$1926.00 and to include hearing expenses in the amount of \$20.00. The security deposit will be applied against any monies owed.

Issues before the Tribunal

7. The landlord is seeking:
 - An Order for Vacant Possession of the rented premises;
 - Rent paid \$1926.00;
 - Late fees \$75.00;
 - Hearing expenses \$20.00;
 - Security deposit of \$450 to be applied against monies owed.

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 is the following sections of the *Residential Tenancies Act, 2018*: Sections 14, 15 and Section 19: Notice where failure to pay rent. Also, relevant and considered in this decision are Sections of the *Residential Tenancies Policy Manual*: 2-4 Deposits, Payments and fees and Section 12-1 Recovery of Costs.

Issue # 1: Vacant Possession of the Rented Premises

Relevant Submissions:

10. The landlord submitted a copy of the termination notice under Section 19: Notice where failure to pay rent. The notice is signed and dated 5-July-2024 and was served electronically via email; [REDACTED] on that day, with a termination date of 16-July-2024 (LL#2).

Landlord's Position:

11. The landlord testified that rent has been in arrears since May-2024, and that the tenant doesn't make payments up to date. The landlord stated that the total amount the tenant owed when the termination notice was issued was \$1026.00. The landlord stated that there were no payments made by the tenant after the landlord issued the termination notice. Current amount of rent owed by the tenant is \$1926.00 including month of August.

Tenant's Position:

12. The tenant acknowledged receipt of the termination notice on that date and agreed that the rent is in arrears.

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, 16-July-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 property by 16-July-2024.

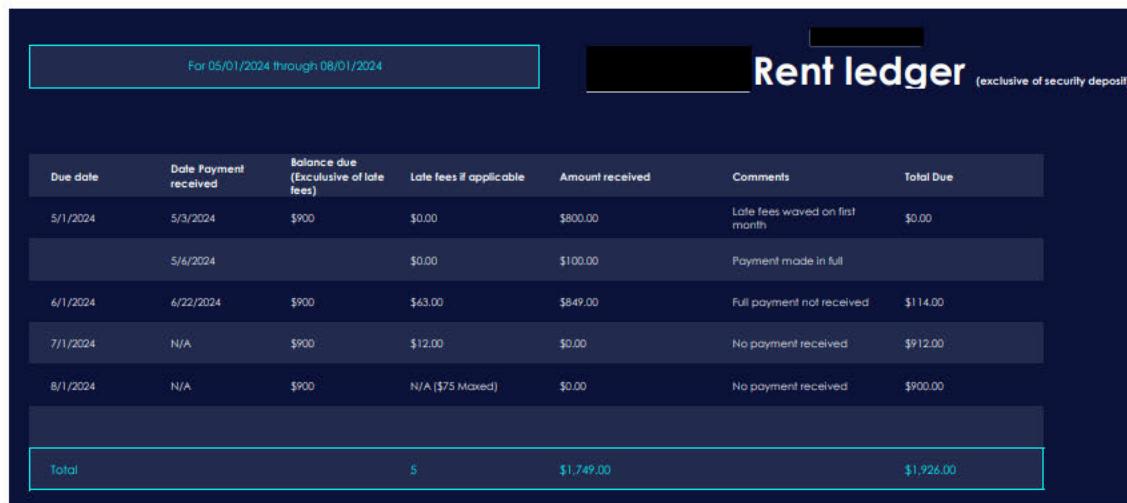
Decision

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

Issue # 2: Rent Paid \$1926.00

Landlord's Position:

17. The landlord stated that the rent is outstanding in the amount of \$1926.00 including month of August. The landlord submitted a rental ledger to support his claim (LL#3). The landlord is seeking rent to be paid in full.



Due date	Date Payment received	Balance due (Exclusive of late fees)	Late fees if applicable	Amount received	Comments	Total Due
5/1/2024	5/3/2024	\$900	\$0.00	\$800.00	Late fees waived on first month	\$0.00
	5/6/2024		\$0.00	\$100.00	Payment made in full	
6/1/2024	6/22/2024	\$900	\$63.00	\$849.00	Full payment not received	\$114.00
7/1/2024	N/A	\$900	\$12.00	\$0.00	No payment received	\$912.00
8/1/2024	N/A	\$900	N/A (\$75 Maxed)	\$0.00	No payment received	\$900.00
Total			5	\$1,749.00		\$1,926.00

Tenant's Position:

18. The tenant stated that he was not paying rent as the premises were uninhabitable as the water was cut off in the middle of July. The tenant stated that he is unwilling to pay rent for that period.

Analysis

19. The rent was due on the 1st of July, making the tenant's testimony regarding the water being cut off in the middle of July irrelevant to his obligation to pay rent on 1st of July. 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 August 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 June-2024 to 19-August-2024, in the amount of \$1511.50. See amended ledger below:

Amended Rental Ledger 2024-0617-NL			
Date	Action	Amount	Total
		Balance	
May 1, 2024	Rent due	\$900.00	\$900.00
May 3, 2024	Payment	-\$800.00	\$100.00
May 6, 2024	Payment	-\$100.00	\$0.00
June 1, 2024	Rent due	\$900.00	\$900.00
June 22, 2024	Payment	-\$849.00	\$51.00
July 1, 2024	Rent due	\$900.00	\$951.00
August 1-19, 2024	Rent due	\$560.50	\$1,511.50

Daily rate: \$900 x 12 mths = \$10800

\$10800.00 / 366 days = \$29.50 per day

20. The tenant shall pay a daily rate of \$29.50 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 \$1511.50.

Issue # 3: Late fees \$75.00

22. 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

23. *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.

24. 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

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

Issue # 4: Hearing expenses \$20.00

Analysis

26. 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

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

Issue # 5: Security deposit applied against monies owed \$450.00

Analysis

28. 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).

29. The landlord's claim for losses has been successful as per paragraphs 21 and 27 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 is currently 1% for 2024.

Decision

30. The landlord's claim for security deposit and interest of \$451.44 to be applied against monies owed succeeds.

Summary of Decision

31. The tenant shall pay the landlord \$1155.06 as follows:

Rent \$1511.50

Late fees	\$75.00
Hearing expenses.....	\$20.00
Less Security deposit	<u>\$451.44</u>
Total.....	<u>\$1155.06</u>

32. The tenant shall pay a daily rate of rent beginning 20-August-2024 of \$29.50, until such time as the landlord regains possession of the property.

33. The tenant shall vacate the property immediately.

34. 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.

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

August 21, 2024

Date

Oksana Tkachuk, Adjudicator
Residential Tenancies Office

