

Residential Tenancies Tribunal

Application 2024-0632-NL

Oksana Tkachuk
Adjudicator

Introduction

1. Hearing was called at 2:00 p.m. on 21-August-2024.
2. The applicant, [REDACTED], represented by [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 the 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 he has been properly served. The landlord’s representative submitted an affidavit with their application stating that they had served the tenant with the notice of the hearing electronically via email; [REDACTED] and via prepaid registered mail, tracking # [REDACTED] and by posting it on the door on 31-July-2024 (LL#1). The landlord’s representative submitted a copy of receipt that mail was sent on that date and proof of sent email. In accordance with the *Residential Tenancies Act, 2018* this is good service. 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 month to month rental agreement which commenced on 25-February-2014. Rent is \$480.00 per month due on the first of each month. A security deposit was never paid.
6. The landlord’s representative amended the application to increase the amount of rent from \$2925.01 as per application to \$3405.01 to include rent for the month of August and hearing expenses of \$20.00.

Issues before the Tribunal

7. The landlord is seeking:

- An Order for Vacant Possession of the rented premises.
- Rent paid \$3405.01
- Hearing expenses \$20.00.

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 is the following section of the *Residential Tenancies Act, 2018*: Section 19: Notice where failure to pay rent.

Issue # 1: Vacant Possession of the Rented Premises

Relevant Submissions:

10. The landlord's representative submitted a copy of termination notice under Section 19: Notice where failure to pay rent. The notice is signed and dated 27-June-2024 and was served by prepaid registered mail, via email and by posting it on the front door of the residential premises with a termination date of 31-July-2024 (LL#2).

Landlord's Position:

11. The landlord's representative testified that rent has been in arrears since November-2023, and they are seeking rent to be paid in full.

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, 31-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.

14. I find that the tenant should have vacated the property by 31-July-2024.

Decision

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

Issue # 2: Rent paid \$3405.01

Relevant Submission

16. The landlord's representative testified that rent is outstanding in the amount of \$3405.01. The landlord's representative submitted a copy of the rental ledger to support the claim (LL#3). See copy of ledger below:

Date	Transaction Description	Debit	Credit	Balance
	Opening balance			8.00 CR
01-JUN-23	Periodic Debit	263.00		255.00
22-JUN-23	Bank Payment		299.99	44.99 CR
01-JUL-23	Periodic Debit	263.00		218.01
01-AUG-23	Periodic Debit	263.00		481.01
01-SEP-23	Periodic Debit	263.00		744.01
01-OCT-23	Periodic Debit	263.00		1007.01
01-NOV-23	Periodic Debit	✓ 263.00 <i>170.01</i>		1270.01
01-DEC-23	Periodic Debit	✓ 263.00		1533.01
01-JAN-24	Periodic Debit	✓ 263.00		1796.01
01-FEB-24	Periodic Debit	✓ 263.00		2059.01
22-FEB-24	Bank Payment		100.00	1959.01
01-MAR-24	Periodic Debit	✓ 263.00		2222.01
01-APR-24	Periodic Debit	✓ 263.00		2485.01
24-APR-24	Bank Payment		1000.00	1485.01
01-MAY-24	Periodic Debit	✓ 480.00		1965.01
01-JUN-24	Periodic Debit	✓ 480.00		2445.01
01-JUL-24	Periodic Debit	✓ 480.00		2925.01

*July 2024 \$480
June ✓ 480
May ✓ 480
Apr ✓ 263
Mar ✓ 263
Feb ✓ 263
Jan ✓ 263
Dec 2023 263
Nov 2023 263
Oct 2023 170.01
\$2,925.01*

Landlord's Position

17. The landlord's representative testified that rent is outstanding in the amount of \$3405.01 including month of August. 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 August as this tribunal does not consider future rent (see below). I find that the tenant is responsible for outstanding rent till 21-August-2024 in the amount of \$3255.55.

Amended Rental Ledger 2024-0632-NL			
Date	Action	Amount	Total
December 31, 2023		Balance	\$1,533.01
January 1, 2024	Rent due	\$263.00	\$1,796.01
February 1, 2024	Rent due	\$263.00	\$2,059.01
February 22, 2024		Payment	-\$100.00
March 1, 2024	Rent due	\$263.00	\$2,222.01
April 1, 2024	Rent due	\$263.00	\$2,485.01
April 24, 2024		Payment	-\$1,000.00
May 1, 2024	Rent due	\$480.00	\$1,965.01
June 1, 2024	Rent due	\$480.00	\$2,445.01
July 1, 2024	Rent due	\$480.00	\$2,925.01
August 1-21, 2024	Rent due	\$330.54	\$3,255.55

Daily rate: \$480 x 12 mths = \$5760.00
\$5760 / 366 days = \$15.74 per day

20. The tenant shall pay a daily rate of \$15.74 until such time as the landlord regains possession of the property.

Decision

21. The landlord's claim for rent succeeds in the amount of \$3255.55.

Issue # 3: Hearing expenses \$20.00.

Relevant Submission

22. The landlord paid \$20.00 for the application fee and is seeking reimbursement. The landlord's representative submitted a copy of the receipt to support the claim (LL#4).

Analysis

23. In accordance with Section 12-1 of the *Residential Tenancies Policy Manual*: Costs, and as the landlord's claim was successful as per paragraphs 15 and 21, the landlord will be awarded with \$20.00 filing fee.

Decision

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

Summary of Decision

25. The tenant shall pay the landlord \$3275.55 as follows:

Rent	\$3255.55
Hearing expenses.....	\$20.00

Total..... **\$3275.55**

26. The tenant shall pay a daily rate of rent beginning 22-August-2024 of \$15.74, until such time as the landlord regains possession of the property.

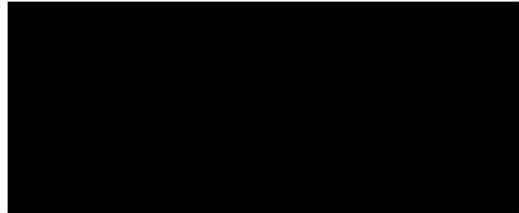
27. The tenant shall vacate the property immediately.

28. 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.

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

August 27, 2024

Date



Oksana Tkachuk
Residential Tenancies Office