

Residential Tenancies Tribunal

Application 2024-0640-NL

Michael Reddy
Adjudicator

Introduction

1. Hearing was held on 21-August-2024 at 9:15 am.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as the landlords, attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as the tenant, was not in attendance.

Preliminary Matters

4. The tenant was not present or represented at the hearing and I was unable to reach them 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 they have been properly served. The landlord submitted an affidavit (LL#1) with their application stating that they had served the tenant with notice of the hearing both personally and electronically on 1-August-2024 at approximately 11:10am. 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 their absence.
5. A written month-to-month rental agreement (LL#2), commenced in September-2023. Rent is established at \$900.00 per month and is due on the first of each month. A security deposit of \$450.00 was paid in September-2023 to the previous landlord and remains in the current landlord's possession.
6. The landlords amended their application to include rent arrears for the month of August-2024, as well as hearing expenses.
7. The disposition of the security deposit will also be determined in this decision.

Issues before the Tribunal

8. The landlord is seeking:
 - Order of Vacant Possession;
 - Rent arrears and late fees;
 - Security deposit to be applied against payment owed; and
 - Hearing expenses.

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).
10. Also discussed and referred to in this decision are sections 14, 15, 19, 34 and 35 of the *Act*, and Residential Tenancies Policy Manual 7-01 and 12-01.

Issue 1: Vacant Possession

Relevant Submission

11. Along with their application, the landlords provided copies of 3-termination notices (LL#3) as follows:
 - a. Termination issued 22-June-2024 stating a move out date of 6-July-2024.
 - b. Termination issued 7-July-2024 stating a move out date of 8-July-2024.
 - c. Termination issued 11-July-2024 stating a move out date of 22-July-2024.

Landlord's Position:

12. The landlords testified that they purchased the rental premises on 16-May-2024. The tenant was already residing on the premises at that time. During the real estate transaction, they had been led to believe that the tenant paid her rent and had a zero-balance. However, when they attempted to collect the rent monies from the tenant for June-2024, the tenant told them that she had not been paying rent to the previous owners. Further, she has made any rent payments since.
13. The landlords testified that each of the three termination notices were served to the tenant, both in person and electronically, on the same date of issue. The landlords are seeking to have the tenant vacate the premises.

Analysis

14. To receive an order for vacant possession, a landlord must have issued a valid termination notice. As there were multiple termination notices provided, Residential Tenancies Policy 7-01 must be given consideration. Specifically, *"if a termination notice is already in place and a second notice is issued by the same person whereby the termination date is later than that specified in the first notice, then the person issuing the*

second notice has thereby indicated that they are intending the tenancy to be extended to the date set out in the second notice. The party receiving this second notice is no longer required to abide by the termination date set out in the first notice and the termination date in the second notice is the date that the tenant is required to vacate.”

15. Given the factors as noted above, only the validity of the termination notice issued on 11-July-2024 stating a move out date of 22-July-2024 will be analyzed for validity and compliance with all relevant sections of the Act.

16. 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.*

Requirements for notices

34. *A notice under this Act shall*

- (a) be in writing in the form prescribed by the minister;*
- (b) contain the name and address of the recipient;*
- (c) identify the residential premises for which the notice is given; and*
- (d) state the section of this Act under which the notice is given.*

17. The landlord submitted a copy of the termination notice (LL#3) issued on 11-July-2024. It is in writing in the form prescribed by the minister. It contains the name and address of the tenant. It identifies the residential premises it regards. It identifies itself as being issued under s. 19 and s. 20 of the Act. It therefore complies with s. 34.

18. LL#3 was signed by the landlord. It specifies the date on which the tenancy is to terminate, and the tenant is to vacate the premises. It was served on the tenant in accordance with s. 35(2)(a)/(f) of the Act. It therefore complies with s. 19(4) of the Act.
19. Testimony confirmed that this is a month-to-month agreement with rent due on the 1st of each month. The tenant was in rent arrears more than 5-days when the termination notice was served and continued to be in rent arrears on the move out date of 22-July-2024, which is not less than 10-days after it was served. It therefore complies with s.19(1)(b) of the Act. As validity has been determined under s.19 of the Act, further analysis of validity under s.20 is not required.
20. The termination notice complies with all relevant sections of the Act and is therefore valid.

Decision

21. The valid termination notice gave a move out date of 22-July-2024. The tenancy agreement ended on that date. Insofar as the tenant still has possession of the premises, they do so illegally. The landlords' application for an order of vacant possession succeeds.

Issue 2: Rent and Late Fees Paid

Landlord's Position:

22. The landlords testified that the tenant has not paid them any rent monies since they purchased the building, and they are claiming rental arrears of \$900.00 per month for June-2024, July-2024 and August-2024, as well as the maximum allowable late fees. A rental ledger (LL#4) was provided in support of their testimony.

Analysis

23. 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.
24. Section 15 of the *Residential Tenancies Act, 2018* states:

5. (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. The landlord was able to show that rent has not been paid and late fees have not been charged. The maximum late fee of \$75.00 as prescribed by the Minister is allowed.
26. The rental ledger is amended to show a daily rate for August-2024, as this tribunal does not consider future rent beyond the date of hearing (see below).

Amended Rental Ledger 2024-0581				
Date	Action	Amount Due	Amount Paid	Total
1-Jun-24	Rent	\$900.00	\$0	\$900.00
1-Jul-24	Rent	\$900.00	\$0	\$1800.00
1 – 21 Aug-24	Rent	\$619.71	\$0	\$2419.71
	Late fees	\$75.00	\$0	\$2494.71

Daily rate: $\$900.00 \times 12 \text{ months} = \$10,800.00$
 $\$10,800.00 / 366 \text{ days} = \29.51 per day

Decision

27. The landlord's claim for rent and late fees succeeds in the amount of \$2494.71.
28. The tenant shall pay a daily rate of \$29.51 after 21-August-2024 until such time as the landlord regains possession of the premises.

Issue 3: Security Deposit

29. The landlord is owed moneys and is therefore entitled to apply the security deposit against the sum owed. In this case, the initial security deposit was \$450.00.
30. S. 14(7) of the *Act* says that a landlord shall credit interest to the tenant on the full amount or value of the security deposit, at the rate prescribed by the regulations, during the time the security deposit is held by the landlord. The regulations prescribe a cumulative simple interest rate of 1% annual for the year of 2024. This results in interest of \$2.89, for a total of \$452.89.

Decision

31. The landlord can apply the security deposit with interest against the sum owed.

Issue 4: Hearing expenses

Relevant Submission

32. The landlord paid a \$20.00 application fee and is seeking reimbursement. A copy of the receipt was provided (LL# 5).

Analysis

33. Section 12-1 of the *Residential Tenancies Policy* states that in general, claimable costs may include the filing fee and costs associated with serving the other party with the application and evidence. As the landlord's claim has been successful, the tenant shall pay the hearing expenses.

Decision

34. The landlords claim for hearing expenses succeeds in the amount of \$20.00.


Summary of Decision

35. The tenant shall pay to the landlord \$ 2,061.82 as follows:

Rent and late fees	\$2494.71
Hearing expenses	\$ 20.00
Less: security deposit + interest	<u>\$ 452.89</u>
Total	\$2061.82

36. The tenant shall continue to pay rent at a daily rate of \$29.51 per day for each day they remain in the premises past 21-August-2024.
37. The landlord is granted an order of vacant possession.
38. The tenant shall pay to the landlord any costs charged to the landlord, by the Office of the High Sherriff, should the landlord be required to have the Sheriff enforce the attached Order of Possession.

16-September-2024
Date


Michael Reddy, Adjudicator
Residential Tenancies Office