

Residential Tenancies Tribunal

Application 2024-0737-NL

Oksana Tkachuk
Adjudicator

Introduction

1. Hearing was called at 2:00 p.m. on 12-September-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 she 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] 14-August-2024 (LL#1). The landlord's representative submitted a 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 1-November-2020. Rent is \$950.00 per month due on the first of each month. A security deposit of \$581.00 was paid on 1-November-2020.
6. The landlord's representative amended the application to decrease the amount of rent from \$2155.00 as per application to \$925.00 including late and to include hearing expenses 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 and late fees \$925.00.
- Hearing expenses \$20.00.
- Security deposit of \$581.00 to be applied against any 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 section of the *Residential Tenancies Act, 2018*: Section 14: Security deposit, Section 15: Fee for failure to pay rent, Section 19: Notice where failure to pay rent, and following sections of the *Residential Tenancies Policy Manual*: Section 2-4; Deposits, Payments and Fees and Section 12-1: Costs.

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 8-July-2024 and was served electronically via email, and by posting it on the front door of the residential premises on that date with a termination date of 20-July-2024 (LL#2).

Landlord's Position:

11. The landlord's representative testified that rent has been in arrears since March-2024, and they are seeking vacant possession of residential premises.

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

- rented from month to month,*
- rented for a fixed term, or*
- 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, 20-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 20-July-2024.

Decision

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

Issue # 2: Rent paid and Late fees \$925.00

Relevant Submission

16. The landlord's representative testified that rent is outstanding in the amount of \$925.00. The landlord's representative submitted a copy of the rental ledger to support the claim (LL#3). See copy of ledger below:

Statement of Account - [REDACTED]				
Date	Debit	Credit	Balance	
2024-05-31			-\$365.00	
2024-06-01	\$885.00		\$520.00	
2024-07-01	\$585.00		\$1,105.00	
2024-08-01	\$950.00		\$2,055.00	
2024-08-28		\$2,155.00	-\$100.00	
2024-08-28	\$75.00		-\$25.00	
2024-09-01	\$950.00		\$925.00	
Current Balance				\$925.00

Landlord's Position

17. The landlord's representative testified that rent is outstanding in the amount of \$925.00 including month of September. 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. 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*

19. *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.

20. The landlord was able to show that rent was not paid in June, July and August and late fees of \$75.00 have been charged on 28-August-2024. 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.

21. The rental ledger is amended to show a daily rate for September as this tribunal does not consider future rent (see below). I find that the tenant is responsible for outstanding rent till 13-September-2024 in the amount of \$348.68.

Amended Rental Ledger 2024-0737-NL			
Date	Action	Amount	Total
May 31, 2024		Balance	-\$365.00
June 1, 2024	Rent due	\$885.00	\$520.00
July 1, 2024	Rent due	\$585.00	\$1,105.00
August 1, 2024	Rent due	\$950.00	\$2,055.00
August 28, 2024		Payment	-\$2,155.00
August 28, 2024	Late fees	\$75.00	-\$25.00
September 1-12, 2024	Rent due	\$373.68	\$348.68

Daily rate: $\$950 \times 12 \text{ mths} = \11400.00
 $\$11400 / 366 \text{ days} = \31.14 per day

22. The tenant shall pay a daily rate of \$31.14 until such time as the landlord regains possession of the property.

Decision

23. The landlord's claim for rent and late fees succeeds in the amount of \$348.68.

Issue # 3: Hearing expenses \$20.00.

Relevant Submission

24. 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

25. 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

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

Issue #4: Security deposit applied against monies owed \$581.00

Analysis

27. 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).

28. The landlord's claim for losses has been successful as per paragraphs 23 and 26 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 the 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 2020-2023 was 0% and is currently 1% for 2024.

Decision

29. The landlord's claim for security deposit plus interest in the amount of \$585.08 to be applied against monies owed succeeds.

Summary of Decision

30. The tenant shall pay to the landlord \$0.00 as follows:

Rent and late fees..... \$348.68

Hearing expenses \$20.00

Less partially security deposit..... 368.68

Total **\$0.00**

31. The tenant shall pay a daily rate of rent beginning 13-September-2024 of \$31.14, until such time as the landlord regains possession of the property.

32. The tenant shall vacate the property immediately.
33. 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.
34. The landlord will be awarded an Order of Possession.

September 18, 2024

Date

Oksana Tkachuk
Residential Tenancies Office

