

Residential Tenancies Tribunal

Application 2024-0579-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 22-October-2024 at 9:15 am.
2. The applicants, [REDACTED], hereinafter referred to as the landlord, was represented at the hearing by [REDACTED] and [REDACTED], who attended via teleconference.
3. The respondents, [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 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. A notice of rescheduled hearing was sent to the respondent by our office on 24-September-2024 by registered mail. Checking the tracking number showed that the documents were received. 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.

Issues before the Tribunal

5. Should the landlords' claim for unpaid rent and late fees succeed?
6. Should the landlord's claim for an order of vacant possession succeed?
7. What is the proper disposition of the security deposit?

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 considered and referred to in this decision are sections 19(1), 19(4), and 34 of the *Act*, as reproduced here:

Notice where failure to pay rent

19. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),

(a) where the residential premises is rented from week to week and the amount of rent payable by a tenant is overdue for 3 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 3 days after the notice is served on the tenant; and

(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.

Issue 1: Unpaid Rent

10. The landlords claim for \$2959.00 in unpaid rent and \$70.00 in late fees. A rental ledger was provided in support of this claim (LL#5). According to s. 15(1) of the *Act*, 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 rate set by the minister is \$5.00 for the first day and \$2.00 for each day thereafter, to a maximum of \$75.00. In the present case, the rent has been overdue for more than 35 days, so the maximum late payment fee is justified. As the landlord has claimed no more than \$70.00, that is what will be awarded.
11. I accept the landlord's uncontradicted testimony. However, the \$2959.00 total includes the full rent for the month of October. This tribunal cannot award future rent. Therefore, a daily rate must be calculated. The correct formula for determining a daily rate is found by multiplying the monthly rent of \$1020 by the twelve months of the year divided by the 366 days of this year. In this case, $\$1020/\text{month} \times (12 \text{ months}/366 \text{ days}) = \sim \$33.44/\text{day}$. Multiplying this by the days of October that have begun by the time of the hearing yields a total rent owing for October of \$735.74. This makes the total rent owing at the time of the hearing of \$2645.74.
12. The landlord's claim for unpaid rent succeeds in the amount of \$2645.74. The landlord's claim for late fees succeeds in the amount of \$70.00.

Issue 2: Vacant Possession

13. To receive an order of vacant possession, a landlord must have submitted a valid termination notice. To be valid, a termination notice must comply with all relevant sections of the *Act*. The landlord submitted a termination notice they issued to the tenant (LL#4).
14. LL#4 is a termination notice in writing in the form prescribed by the minister. It contains the name and address of the recipient. It identifies the residential premises for which it is given. It specifies that it was issued under s. 19 of the *Act*. It therefore complies with s. 34 of the *Act*.
15. LL#4 was signed by the landlord. It states the date on which the rental agreement is to terminate and the tenant is to vacate the premises. It was served on the tenant by sliding it under the tenant's apartment door in accordance with s. 35(2)(d) of the *Act*. It therefore complies with s. 19(4) of the *Act*.
16. LL#4 was issued on 11-June-2024. The landlord testified that at this point rent had been overdue for more than five days. It gives a termination date of 24-June-2024, which is not less than five days after it was served. It therefore complies with s. 19(1) of the *Act*.
17. LL#1 complies with all relevant provisions of the *Act* and is therefore valid under s. 19.

Issue 3: Security Deposit

18. As the landlord is owed moneys, they are entitled to apply the security deposit against the sum owed. In this case, the security deposit was \$720.00.
19. S. 14(7) of the of the *Act* states 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 an interest rate of 0% for the relevant years prior to 2024 and a simple cumulative interest rate of 1% annual. Calculated to the date of the hearing, that results in a total interest of \$5.82.

Decision

20. The landlord's claim for unpaid rent succeeds in the amount of \$2744.74.
21. The landlord's claim for late fees succeeds in the amount of \$70.00.
22. The valid termination notice gave a move out date of 24-June-2024. The tenancy agreement ended on that date. Insofar as the tenant still has possession of the premises, he does so illegally. The landlords' application for an order of vacant possession succeeds.
23. The landlords were successful in their claim and so are entitled to have their reasonable hearing expenses covered. In this case, the landlords seek the \$20 application fee and \$16.00 for the cost of registered mail. However, as no receipt was provided for the registered mail, I decline to award that cost.
24. The landlords may apply the security deposit and interest, totalling \$725.82, against the sum owed.

Summary of Decision

25. The tenant shall vacate the premises immediately.
26. 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.
27. The landlord is granted an order of possession.
28. The tenant must continue to pay rent at the daily rate of \$33.44/day for each day they remain in the premises past 22-October-2024.

29. The tenant shall pay to the landlord \$2009.92 as follows:

Unpaid Rent.....	\$2645.74
Late fees.....	\$70.00
Hearing Expenses.....	\$20.00
Less Security Deposit.....	-\$725.82)
Total.....	\$2009.92

28-October-2024
Date


Seren Cahill
Residential Tenancies Office