

Residential Tenancies Tribunal

Application 2024-0715-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 24-September-2024 at 1:46 pm.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as the landlords, attended via teleconference.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as the tenants, also attended via teleconference.

Preliminary Matters

4. The respondents acknowledged they received notice of this hearing more than ten days before the hearing date.

Issues before the Tribunal

5. Should the landlord's claim for unpaid rent and be granted?
6. Should the landlord's claim for an order of vacant possession be granted?

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).
8. Also considered and referred to in this decision are sections 19(1), 19(4), and 34 of the *Act*, as follows:

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

Landlords' Position

9. The landlords submit that the tenants owe \$4200 in unpaid rent, which represents the full \$1400/month rent for the months of July, August, and September.

Tenants' Position

10. The tenants agree that they have not paid rent since June. They have stated they intend to pay when they can.

Analysis

11. There is no dispute that the tenants owe rent for the months of July, August, and September. However, this tribunal cannot deal with future rent. Therefore, only rent to the date of the hearing can be awarded. A daily rate must be calculated to determine the amount owed for September.
12. The correct formula for determining a daily rate is multiplying the monthly rent by the 12 months of the year and dividing by the 366 days of this year. In the present case, the daily rate is therefore $\$1400 * (12 \text{ years} / 366 \text{ days}) = \sim \$45.90/\text{day}$. Multiplying by the 24 days of September which had begun as of the hearing yields a total amount due for September of \$1101.64.
13. The landlords' claim for unpaid rent succeeds in the amount of \$3901.64.
14. The tenants will continue to owe rent at the daily rate for each day they remain in the premises after 24-September-2024.

Issue 2: Vacant Possession

Landlord's Position

15. The landlords submitted that they have provided a valid termination notice, that the termination date on the notice has past, and that they are therefore entitled to an order of vacant possession.

Tenants' Position

16. The tenants say they are willing to move out and are in the process of doing so.

Analysis

17. In order to receive an order of vacant possession, a landlord must have issued a valid termination notice. To be valid, a termination notice must comply with all relevant sections of the *Act*.
18. The landlords submitted a copy of a termination notice (LL#1). It is in writing in the form prescribed by the minister. It contains the name and address of the recipients. It is in writing in the form prescribed by the minister. It contains the names and address of the recipients. It identifies the residential premises it regards. It identifies itself as being issued under s. 19 of the *Act*. It therefore complies with s. 34.
19. LL#1 was signed by the landlord. It specifies the date the date on which the tenancy is to terminate and the tenant is to vacate the premises. It was served on the tenants personally in accordance with s. 35(2)(a) of the *Act*. It therefore complies with s. 19(4) of the *Act*.
20. The rental agreement (LL#4) is a fixed term rental agreement with rent due on the 1st of each month. LL#1 is dated 30-July-2024 and was issued on the same day. According to

the facts as agreed on by the parties, rent was overdue by more than five days. It gives a move out day of 10-August-2024, which is not less than 10 days after it was served. It therefore complies with s. 19(1)(b) of the *Act*.

21. LL#1 complies with all relevant sections of the *Act* and is therefore valid.

Decision

22. The valid termination notice gave a move out date of 10-August-2024. The tenancy agreement ended on that date. Insofar as the tenants still have possession of the premises, they do so illegally. The landlords' application for an order of vacant possession succeeds.
23. The landlords' claim for unpaid rent succeeds in the amount of \$3901.64.
24. The tenants shall continue to pay the daily rate of \$45.90/day for each day they remain in the premises past 24-September-2024.
25. As the tenancy has ended, the security deposit must be dealt with. As the landlord is owed moneys, they are entitled to apply the security deposit against moneys owed. The security deposit in this case is \$700 and was paid in mid-June 2023.
26. S. 14(7) of the *Act* (7) 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 interest rate prescribed by the regulations was 0% for 2023 and 1% annual simple cumulative interest for 2024. Calculated to the date of the hearing, the total interest accrued is therefore \$5.14.

Summary of Decision

27. The tenants shall vacate the premises 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 is granted an order of possession.
30. The tenants shall continue to pay the daily rate of \$45.90/day for each day they remain in the premises past 24-September-2024.

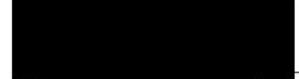
31. The tenants shall pay to the landlords \$3196.50 as follows:

Rent.....\$3901.64
Less Security Deposit....-(705.14)

Total.....\$3196.50

4-October-2024

Date



Seren Cahill
Residential Tenancies Office