

Residential Tenancies Tribunal

Application 2024-0830-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 2-October-2024 at 2:01 pm.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as the landlords, attended via teleconference.
3. The respondent, [REDACTED], hereinafter referred to as the tenant, did not attend.
4. A witness, [REDACTED], appeared via teleconference on behalf of the applicants.

Preliminary Matters

5. 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 landlords submitted an affidavit (LL#1) with their application stating that they had served the tenant with notice of the hearing personally on 18-September-2024 at 5:00 pm. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlords, I proceeded with the hearing in their absence.

Issues before the Tribunal

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 22 and 34 of the *Act*, reproduced below:

Notice where tenant's obligation not met

22. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes statutory condition 2 set out in subsection 10(1), the landlord may give the tenant notice requiring the tenant to comply with the condition.

(2) Where a tenant contravenes statutory condition 2 set out in subsection 10(1) within 3 days after the notice under subsection (1) has been served or within a reasonable time, the landlord may give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises on a specified date not less than 5 days after the notice has been served.

(3) 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: Vacant Possession

9. In order to succeed in an application for an order of vacant possession, a landlord must submit a valid termination notice. To be valid, a termination notice must comply with all relevant sections of the *Act*.

10. The landlords submitted a termination notice labeled LL#2. LL#2 is written in the form prescribed by the minister. It contains the name and address of the recipient. It identifies the residential premises for which it was given. It states that it is given under s. 22 of the *Act*. It therefore complies with s. 34.

11. LL#2 was signed by the landlords. It states the date on which the rental agreement is to terminate as 3-September-2024. According to the testimony of the witness, it was served

on the tenant personally in accordance with s. 35(2)(a) of the *Act*. It therefore complies with s. 22(3).

12. The landlords testified that they had concerns over the state of the premises. They said they had observed it as being unclean and in poor repair. One item which was visible from the outside of the apartment was a broken window. The landlords testified that the window was a double-pane and it was the interior pane which was broken. They said that they therefore on 7-August-2024 served personally on the tenant a formal request for repairs (LL#3). This request for repairs lists two items. The first is to repair the broken window. The second says that the tenant is to "clean premises and repair damage beyond normal wear and tear." The landlords testified that they issued LL#2, the termination notice, when the repairs were incomplete.
13. S. 10 of the *Act* provides eight mandatory statutory conditions which are in effect in wherever the relationship of landlord and tenant exists in regard to residential premises. The second of these conditions reads as follows:
 2. **Obligation of the Tenant** - The tenant shall keep the residential premises clean, and shall repair damage caused by a wilful or negligent act of the tenant or of a person whom the tenant permits on the residential premises.
14. The landlords argue that by failing to keep the premises clean and repair the damaged window, the tenant has violated this statutory condition. Several pictures were provided in support of this (LL#4). The landlords testified that these photos were taken on or about 15-August-2024 and show the state of the premises at that time. There is a photo of the broken window, and it shows no sign of any attempt to repair.
15. I accept based on the uncontradicted testimony and documentary evidence of the landlords and their witness that the tenant violated statutory condition 2 and, after being given notice to remedy the issue under s. 22(1), failed to do so, and that LL#2 was given in response to this failure.
16. LL#2 was given on 28-August-2024 and gives a termination date of 3-September-2024. This provides not less than five days notice as required under s. 22(2) of the *Act*.
17. LL#2 complies with all relevant sections of the *Act* and is therefore valid.

Decision

18. A valid termination notice was issued which gives a move out date of 3-September-2024. The rental agreement terminated on that date. Insofar as the tenant is still residing at the premises, they are doing so illegally.
19. The landlord's application for an order of vacant possession succeeds.

Summary of Decision

20. The tenant shall vacate the premises immediately.

21. 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.
22. The landlord is granted an order of possession.

7-October-2024

Date



Seren Cahill
Residential Tenancies Office