

Residential Tenancies Tribunal

Application 2024-0889-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 28-October-2024 at 2:00 pm.
2. The applicant, [REDACTED], hereinafter referred to as the landlord, attended via teleconference.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as the tenants, did not attend.

Preliminary Matters

4. The tenant [REDACTED] joined the teleconference before the hearing began. She advised that she had only become aware of the hearing date the day before and asked for a postponement. The landlord opposed this request on the basis that the tenant had been properly served and requested the postponement only at the last moment. 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 a pair of affidavits (LL#1 and LL#2) with their application stating that they had served the tenants with notice of the hearing electronically on 17-October-2024 at 12:03 pm. Proof of service was also provided (LL#3 and LL#4). The tenant acknowledged that the email had been received on that date, but that she had not seen it until 27-October. She then left the conference. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlords, I denied the postponement and proceeded with the hearing in the absence of the tenants.

Issues before the Tribunal

5. Should the landlord's 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 and Late Fees

10. The landlord claims for \$2400.00 in unpaid rent, which represents the entire monthly rent of \$800/month for each of the months of August, September, and October. A rental ledger was provided in support of this (LL#5) She also seeks \$800.00 for the month of November as it is quickly approaching, and she feels she will be unable to find a new tenant in time.
11. I accept the landlord's uncontradicted testimony that the monthly rent is \$800.00 and that she has not received payment since July. However, this tribunal does not deal in future rent. Rent can therefore only be awarded to the date of the hearing. A daily rate must be determined.
12. The correct formula for determining a daily rate is found by 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 formula is $\$800/\text{month} * (12 \text{ months} / 366 \text{ days}) = \sim \$26.23/\text{day}$. Multiplying this rate by the 28 days of October which had begun by the time of the hearing yields a total rent owing for October of \$734.43, yielding a total rent owing at the time of the hearing of \$2334.43.
13. S. 15(1) of the *Act* states that 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 set the rate of late payment fees at \$5.00 for the first day and \$2.00 for each day thereafter, to a maximum of \$75.00. As the rent has been overdue for more than 35 days, the maximum late fee penalty applies.

Issue 2: Vacant Possession

14. 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#6).
15. LL#6 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*.
16. LL#6 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 personally in accordance with s. 35(2)(a) of the *Act*. It therefore complies with s. 34 of the *Act*.
17. LL#6 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 placing it on the tenants' apartment door in accordance with s. 35(2)(c) of the *Act*. It therefore complies with s. 19(4) of the *Act*.

18. LL#6 was issued on 15-August-2024. Parties agree that at this point rent had been overdue for more than five days. It gives a termination date of 26-August-2024, which is not less than ten days after it was served. It therefore complies with s. 19(1) of the Act.
19. LL#6 complies with all relevant provisions of the *Act* and is therefore valid under s. 19.

Issue 3: Security Deposit

20. 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 \$400.00.
21. S. 14(7) 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 landlord testified that the tenancy began on 19-April-2024. The regulations prescribe an interest rate of a simple cumulative interest rate of 1% annual. Calculated to the date of the hearing, that results in a total interest of \$2.11.

Decision

22. The landlord's claim for unpaid rent succeeds in the amount of \$2334.43.
23. The landlord's claim for late fees succeeds in the amount of \$75.00.
24. The valid termination notice gave a move out date of 26-August-2024. The tenancy agreement ended on that date. Insofar as the tenants still have possession of the premises, they do so illegally. The landlord's application for an order of vacant possession succeeds.
25. The landlord was successful in their claim and is therefore entitled to have her reasonable hearing expenses compensated. In this case, her expenses consist solely of the \$20.00 application fee.
26. The landlord may apply the security deposit and interest, totaling \$402.11, against the sum owed.

Summary of Decision

27. The tenants shall vacate the premises immediately.
28. The tenants 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 must continue to pay rent at the daily rate of \$26.23 for each day they remain in the premises past the hearing date of 28-October-2024.

31. The tenants shall pay to the landlord \$2027.32 as follows:

Unpaid rent.....	\$2334.43
Late fees.....	\$75.00
Hearing expenses.....	\$20.00
Less Security Deposit.....	-(\$402.11)
Total.....	\$2027.32

04-November-2024

Date

[Redacted]
Seren Cahill
Residential Tenancies Office