

Residential Tenancies Tribunal

Application 2024-0917-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 22-October-2024 at 1:49 pm.
2. The applicant, [REDACTED] hereinafter referred to as the landlord, was represented at the hearing by [REDACTED], who attended via teleconference.
3. The respondent, [REDACTED], hereinafter referred to as the tenant, also attended via teleconference.

Preliminary Matters

4. The respondent confirmed they received notice of the hearing more than 10 days beforehand.

Issues before the Tribunal

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

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act*, 2018 (the *Act*).

10. Also considered and referred 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

Landlord's Position

11. The landlords claim for \$3389.00 in unpaid rent and \$75.00 in late fees. A rental ledger was provided in support of this claim (LL#1).

Tenant's Position

12. The tenant acknowledged he is in arrears regarding the rent. He does not dispute the total owing.

Analysis

13. The parties agree on the amount of rent due. However, this tribunal does not deal in future rent, and therefore cannot award rent for days past the date of the hearing. A daily rate must be calculated. 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 in this year. In the present case, $\$800.00/\text{month} \times (12 \text{ months}/366 \text{ days}) = \sim \$26.23/\text{day}$. Multiplying this by the 22 days of the year that have begun at the time of the hearing yields a total rent owing for October of \$577.05. This results in a total rent owing of \$3166.05.
14. 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 fees at \$5.00 for the first day and \$2.00 for each day thereafter, to a maximum of \$75.00. As rent has been overdue for more than 35 days, the maximum late payment fee applies.
15. The landlord's claim for unpaid rent in the amount of \$3166.05 and late fees in the amount of \$75.00 succeeds.
16. The tenant must continue to pay rent at the daily rate of \$26.23/day for each day they remain in the premises past the date of 22-October-2024.

Issue 2: Compensation for Inconvenience

Landlord's Position

17. The landlord claims \$20.00 for compensation for inconvenience in relation to a mattress they say the tenant left outside the rental unit in a shared space. They say that after numerous attempts to contact the tenant they eventually had to remove the item themselves and seek compensation for this labour.

Tenant's Position

18. The tenant testified that he was advised not to put the mattress in the dumpster. He otherwise would have removed it himself.

Analysis

19. A landlord may claim for self-labour at the rate of minimum wage plus \$8/hour, currently totalling \$23.60/hour. Based on the facts as agreed, the cost of labour for under an hour is justified.
20. The landlord's claim for compensation for inconvenience succeeds in the amount of \$20.00.

Issue 3: Vacant Possession

Landlord's Position

21. The landlord testified that they issued a valid termination notice, the move out date has passed, and that they are therefore entitled to an order of vacant possession.

Tenant's Position

22. The tenant did not dispute the facts as stated by the landlord.

Analysis

23. 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).
24. 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 does incorrectly identify itself as being under s. 19(a) of the *Act*, regarding a week-to-week tenancy, rather than s. 19(b) for a month-to-month. In the present case, however, it is clear that this is a mere typographical error or equivalent which caused no actual confusion. It therefore complies with s. 34 of the *Act*.
25. 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 electronically in accordance with s. 35(2)(f) of the *Act*. It therefore complies with s. 19(4) of the *Act*.

26. LL#4 was issued on 9-September-2024. Parties agree that at this point rent had been overdue for more than five days. It gives a termination date of 20-September-2024, which is not less than five days after it was served. It therefore complies with s. 19(1) of the *Act*.
27. LL#4 complies with all relevant provisions of the *Act* and is therefore valid under s. 19.

Issue 3: Security Deposit

28. 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 \$600.00.
29. 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 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 \$4.85.

Decision

30. The landlord's claim for unpaid rent succeeds in the amount of \$3166.05.
31. The landlord's claim for late fees succeeds in the amount of \$75.00.
32. The valid termination notice gave a move out date of 20-September-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.
33. The landlords may apply the security deposit and interest, totalling \$604.85, against the sum owed.
34. The landlords were successful in their claim and so are entitled to have their reasonable hearing expenses covered. In this case, the landlords seek only the \$20.00 application fee.

Summary of Decision

35. The tenant shall vacate the premises immediately.
36. 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.
37. The landlord is granted an order of possession.


38. The tenant must continue to pay rent at the daily rate of \$26.23/day for each day they remain in the premises past 22-October-2024.

39. The tenant shall pay to the landlord \$2676.20 as follows:

Unpaid Rent.....	\$3166.05
Late fees.....	\$75.00
Compensation for inconvenience.....	\$20.00
Hearing Expenses.....	\$20.00
Less Security Deposit.....	-\$604.85)
Total.....	\$2676.20

04-November-2024

Date


Seren Cahill
Residential Tenancies Office