

Residential Tenancies Tribunal

Application 2024-0975-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 13-November-2024 at 1:46 pm.
2. The applicant, [REDACTED] carrying on business as [REDACTED], hereinafter referred to as the landlord, was represented at the hearing by director [REDACTED], who attended via teleconference.
3. The respondent, [REDACTED], hereinafter referred to as the tenant, also attended via teleconference.

Preliminary Matters

4. The respondent acknowledged they received notice of this hearing but could not recall the exact date. An affidavit (LL#1) was provided by the landlord stating that the tenant had been served personally and electronically on 2-November-2024, and proof of electronic service was also provided (LL#2).

Issues before the Tribunal

5. Should the landlord's claim for unpaid rent 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

Landlord's Position

9. The landlord submitted that the tenant owes \$1300 in unpaid rent, if one included the full monthly rent of \$975.00 for the month of November 2024. A rental ledger was provided in support of this (LL#2).

Tenant's Position

10. The tenant did not dispute that he owes the landlord. He did submit that by his calculations, he believed the amount owing was \$1275.00, and not \$1300.00. He did not dispute the actual amounts he had paid.

Analysis

11. I performed my own calculations and determined that the amount owing is \$1300 if the full amount for the month of November 2024 is included. However, this tribunal cannot deal in future rent, and is therefore only able to award rent to the date of the hearing. A daily rate must therefore be calculated.
12. The correct formula for determining a daily rate is to multiply the monthly rent by the 12 months of the year and dividing by the 366 days of this year. In this case, the daily rate is $\$975/\text{month} \times (12 \text{ months}/366 \text{ days}) = \sim \$31.97/\text{day}$. Multiplied by the 13 days of November which had begun at the time of the hearing yields a total amount of rent owing for November of \$415.57. Total rent owing to the date of the hearing is therefore \$740.57.

Issue 2: Vacant Possession

Landlord's Position

13. The landlord submitted that he had issued a valid termination notice, that the specified termination date has passed, that the tenant remains in the unit, and that they are therefore entitled to an order of vacant possession.

Tenant's Position

14. The tenant did not dispute the landlord's testimony.

Analysis

15. 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*.

16. The landlord submitted a copy of a termination notice (LL#4). It is in writing in the form prescribed by the minister. It contains the name and address of the recipient. 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.
17. LL#4 was signed by an agent of 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 tenant electronically in accordance with s. 35(2)(f) of the *Act*. It therefore complies with s. 19(4) of the *Act*.
18. The landlord testifies and I accept that this is a month-to-month rental agreement with rent due on the 1st of each month. LL#4 is dated 19-September-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 30-September-2024, which is not less than 10 days after it was served. It therefore complies with s. 19(1)(b) of the *Act*.
19. LL#4 complies with all relevant sections of the *Act* and is therefore valid.

Decision

20. The valid termination notice gave a move out date of 30-September-2024. The tenancy agreement ended on that date. Insofar as the tenant still occupies the premises, he does so illegally. The landlord's application for an order of vacant possession succeeds.
21. The tenant shall pay to the landlord \$740.57 in unpaid rent.
22. The tenant shall continue to pay to the landlord rent at the daily rate of \$31.97 for each day he continues to occupy the premises after 13-November-2024.

Summary of Decision

23. The tenant shall vacate the premises immediately.
24. 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.
25. The tenant shall pay to the landlord \$740.57 in unpaid rent.
26. The tenant shall continue to pay to the landlord rent at the daily rate of \$31.97 for each day he continues to occupy the premises after 13-November-2024.

15-November-2024

Date


Seren Cahill
Residential Tenancies Office