

## Residential Tenancies Tribunal

Application 2024-0988-NL

Seren Cahill  
Adjudicator

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### Introduction

1. Hearing was held on 19-November-2024 at 9:22 am.
2. The applicant, [REDACTED] hereinafter referred to as the landlord, was represented by their agent [REDACTED], who attended via teleconference.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as the tenants, were represented at the hearing by [REDACTED], who also attended via teleconference.

### Preliminary Matters

4. The tenants acknowledged that they had received notice of the hearing ten days or more beforehand.

### Issues before the Tribunal

5. Should the landlords' claim for unpaid rent succeed?
6. Should the landlord's claim for an order of vacant possession succeed?

### 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**

9. The landlord claims \$4481.00 in unpaid rent. A rental ledger was provided in support of this (LL#1). The tenants acknowledged they owed rent and did not dispute the amount. Nevertheless, the rent claimed includes the full monthly rent of \$2000.00 for the month of November. This tribunal does not deal in future rent and can therefore only award up until the date of the hearing. A daily rate must therefore be calculated.
10. 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  $\$2000/\text{month} * (12 \text{ months} / 366 \text{ days}) = \sim \$65.57$ . Multiplied by the 19 days of November

which had begun at the time of the hearing yields a total amount of rent owing for November of \$1245.90. Total rent owing to the date of the hearing is therefore \$3726.90.

### **Issue 2: Vacant Possession**

11. The landlord submitted that they have issued a valid termination notice, that the specified date has passed, that the tenant remains in the unit, and that they are therefore entitled to an order of vacant possession. The tenant did not dispute the landlord's testimony but advised multiple personal tragedies had interfered with their ability to pay.
12. 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*.
13. The landlord submitted a copy of a termination notice (LL#2). It is in writing but is not in the form prescribed by the minister. However, according to 22 (f) of the *Interpretation Act*, RSNL 1990 c I-19, where an Act of the House of Assembly prescribes a form, deviations from the form which do not affect the substance and are not calculated to mislead do not invalidate the form used. Therefore, failure to use the form prescribed by the minister does not necessarily render the notice invalid under s. 34(a) of the *Act*. LL#2 contains the names and address of the recipients. It identifies the residential premises which it regards. It states that it is issued under s. 19 of the *Act*. It therefore complies with s. 34.
14. LL#2 is signed by the agent of the landlord who submitted it. It states 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*.
15. This concerns a fixed term rental agreement (see LL#3). LL#2 is dated 27-September-2024 and was issued the same day. According to the landlord's undisputed evidence, at this point rent was overdue by more than 5 days. It gives a move out day of 8-October-2024, which is not less than 10 days after it was served. It therefore complies with s. 19(1)(b) of the *Act*.
16. LL#2 complies with all relevant sections of the *Act* and is therefore valid.

### **Decision**

17. The valid termination notice gave a move out date of 8-October-2024. The tenancy agreement ended on that date. Insofar as the tenants still occupy the premises, they do so illegally. The landlord's application for an order of vacant possession succeeds.
18. The tenants shall pay to the landlord \$3726.90 in unpaid rent.
19. The tenants shall continue to pay to the landlord rent at the daily rate of \$65.57/day for each day they continue to occupy the premises after 19-November-2024.

20. The tenancy has ended and the disposition of the security deposit must be determined. In this case, the security deposit is \$1000.00 which was paid 16-May-2024.
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 regulations prescribe a simple cumulative 1% annual interest rate for 2024. Calculated to the date of the hearing, this results in total interest of \$5.14.
22. The landlord has succeeded in their application and are therefore entitled to have their reasonable hearing expenses covered. In this case, their hearing expenses consist solely of the \$20.00 application fee.

#### **Summary of Decision**

23. The tenants shall vacate the premises immediately.
24. 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.
25. The tenants shall continue to pay to the landlord rent at the daily rate of \$65.57/day for each day they continue to occupy the premises after 19-November-2024.
26. The tenants shall pay to the landlord \$2741.76 as follows:

Unpaid Rent.....	\$3726.90
Hearing expenses.....	\$20.00
Less Security Deposit.....	-(\$1005.14)
 Total.....	 \$2741.76

22-November-2024

Date

  
Seren Cahill  
Residential Tenancies Office