

Residential Tenancies Tribunal

Application 2024-0991-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 19-November-2024 at 2:01 pm.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as the landlords, were represented at the hearing by [REDACTED], who attended via teleconference.
3. The respondent, [REDACTED], hereinafter referred to as the tenant, was not present.

Preliminary Matters

4. 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 4-November-2024 at 4:54 pm. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.

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 testified that the tenant owes \$753.00 in unpaid rent. A rental ledger (LL#2) was provided in support of this. The ledger does not include rent for the month of November. The landlord declined to amend his application to seek rent for this month.
10. I accept the landlord's uncontradicted testimony. The landlords' claim for unpaid rent succeeds in the amount of \$753.00.

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.
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#3). It is in writing in the form prescribed by the minister. It 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#3 is signed by 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 personally in accordance with s. 35(2)(a) of the *Act*. It therefore complies with s. 19(4) of the *Act*.
15. This concerns a month-to-month rental agreement. LL#3 is dated 6-October-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 17-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#3 complies with all relevant sections of the *Act* and is therefore valid.

Decision

17. The valid termination notice gave a move out date of 17-October-2024. The tenancy agreement ended on that date. Insofar as the tenant still occupies 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 \$753.00 in unpaid rent.
19. The tenancy has come to an end and the security deposit must be dealt with. In this case, the security deposit was \$400.00. The landlord was not aware when the security deposit was first paid, but they took possession of it when they purchased the building in 2021.

20. 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 time period prior to 2024 and a simple cumulative 1% annual interest rate for 2024. Calculated to the date of the hearing, this results in total interest of \$3.54.

Summary of Decision

21. The tenant shall vacate the premises immediately.

22. 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.

23. The tenant shall pay to the landlord \$349.46 as follows:

Unpaid Rent.....\$753.00
Less Security deposit.....-(\$403.54)

Total.....\$349.46

22-November-2024

Date

[Redacted]

Seren Cahill
Residential Tenancies Office