

## Residential Tenancies Tribunal

Application 2024-1028-NL

Seren Cahill  
Adjudicator

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### Introduction

1. Hearing was held on 10-December-2024 at 9:15 am.
2. The applicants, [REDACTED] hereinafter referred to as the landlord, attended via teleconference.
3. The respondent, [REDACTED], hereinafter referred to as the tenant, did not attend.

### 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 landlord submitted an affidavit (LL#1) with their application stating that they had served the tenant with notice of the hearing electronically on 28-November-2024 at 2:50 pm. Proof of service was also provided (LL#2 and LL#3). 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. 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 \$3078.00 in unpaid rent. A rental ledger was provided in support of this (LL#4 and LL#5). I accept the landlord's uncontradicted testimony. However, this includes the full monthly rent of \$1550 for the month of

December. This tribunal does not issue awards for future rent and can therefore only award rent to the date of the hearing. A daily rate must be calculated. The correct formula for determining a daily rate is multiplying the monthly rent by the 12 months of the year and dividing by the 366 days of this year. In the present case, this means the daily rate is  $\$1550/\text{month} \times (12 \text{ months}/366 \text{ days}) = \sim \$50.82/\text{day}$ . Multiplying this by the 10 days of December that have begun as of the time of the hearing yields a total amount due for December of \$508.20. The total amount of rent due at the time of the hearing is therefore \$2036.20.

## **Issue 2: Vacant Possession**

10. 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.
11. 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*.
12. The landlord submitted a copy of a termination notice (LL#6 page 2). It is in writing but is not in the form prescribed by the minister. However, s. 22(f) of the *Interpretation Act*, RSNL 1990, c I-19, states that where a form is prescribed, deviations from the form not affecting the substance nor calculated to mislead, do not invalidate the form used. Therefore, not being in the form prescribed by the minister does not necessarily render the notice invalid. It contains the name and address of the recipient. 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.
13. The notice is signed by an 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*.
14. This concerns a month-to-month rental agreement. The notice is dated 8-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 19-October-2024, which is not less than 10 days after it was served. It therefore complies with s. 19(1)(b) of the *Act*.
15. The notice complies with all relevant sections of the *Act* and is therefore valid.

## **Decision**

16. The valid termination notice gave a move out date of 19-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.
17. The tenants shall pay to the landlord \$2036.20 in unpaid rent.

18. The tenant shall continue to pay rent at the daily rate of \$50.82/day for each day they remain in the premises after 10-December-2024.
19. The tenancy has come to an end and the security deposit must be dealt with. In this case, the security deposit was \$1162.50. It was paid on 31-May-2024. The landlord is owed moneys and may therefore apply the security deposit against the sum owed.
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 a simple cumulative 1% annual interest rate for 2024. Calculated to the date of the hearing, this results in total interest of \$6.16.
21. The landlord was successful in their application and is therefore entitled to be compensated for their reasonable hearing expenses. In this case, their hearing expenses consist solely of the \$20.00 hearing fee.

#### **Summary of Decision**

22. The tenant shall vacate the premises immediately.
23. 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.
24. The tenant shall continue to pay rent at the daily rate of \$50.82/day for each day they remain in the premises after 10-December-2024.
25. The tenant shall pay to the landlord \$887.54 as follows:

Unpaid Rent.....	\$2036.20
Hearing Expenses.....	\$20.00
Less Security deposit.....	-( \$1168.66)
Total.....	\$887.54

20 December-2024  
Date

  
Seren Cahill  
Residential Tenancies Office