

Residential Tenancies Tribunal

Application 2024-1060-NL & 2024-1063-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 17-December-2024 at 9:13 am.
2. The applicant, [REDACTED], hereinafter referred to as the landlord, attended via teleconference.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as the tenants, attended via teleconference.

Preliminary Matters

4. Both parties acknowledged that the other party had served them the notice of their claim more than 10 days before the hearing date.
5. The landlord has applied for an order of vacant possession and the tenants have applied questioning the validity of the termination notice which serves as the basis for the landlord's claim for the order sought. As the determination of the validity of the termination notice is an essential part of the test for determining whether or not to issue an order of vacant possession, these issues have been combined under Issue 1, below.
6. The landlord had initially applied to seek an order concerning unpaid rent. However, at the date of the hearing, he acknowledged he had been paid in full. His application is therefore amended to remove this heading.
7. The tenants claimed for the return of personal possessions. However, their claim under this heading is better understood as compensation for damages and I have reclassified the issue accordingly. The return of personal possessions heading is generally used by tenants who have vacated a property to ask for an order requiring their landlord to return to them specific personal items which, for one reason or another, were left behind.

Issues before the Tribunal

8. Should the landlords' claim for an order of vacant possession succeed?

9. Should the tenant's claim for compensation for inconvenience succeed?
10. Should the tenant's claim for compensation for damages succeed?
11. Should the tenant's claim for other relief succeed?

Legislation and Policy

12. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act*, 2018 (the *Act*).
13. Also considered and referred to in this decision are sections 19(1-4) 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.

(2) Notwithstanding subsection (1), where the tenant pays the full amount of the overdue rent, including a fee under section 15, before the date specified in the notice under paragraph (1)(a) or (b), the rental agreement is not terminated and the tenant is not required to vacate the residential premises.

(3) Subsection (2) does not apply where notice is given to a tenant under paragraph (1)(a) or (b) more than twice in a 12 month period.

(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: Vacant Possession

Landlord's Position

14. The landlord submits that he has issued a valid termination notice (LL#1 page 1), that the move out date specified on the notice has passed, and that he is therefore entitled to receive an order of vacant possession.

Tenant's Position

15. The tenants assert that the termination notice is invalid as the landlord failed to inform them of the correct amounts due.

Analysis

16. In order to receive an order for 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*.
17. The termination notice, LL#1 page 1, is in writing in the form prescribed by the minister. It contains the names and address of the recipients. 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.
18. The notice was signed by the landlord. It specifies the date on which the tenancy is to terminate and the tenants are to vacate the premises. The landlord testified that it was served on the tenants electronically in accordance with s. 35(2)(f) of the *Act*. It therefore complies with s. 19(4) of the *Act*.
19. Parties agreed that this was a month-to-month rental agreement with rent of \$1550 due on the 1st of each month, though the tenants testified that there was a verbal agreement to split the rent into two parts, payable on the 1st and the 15th. The landlord provided a rental ledger (LL#2). I can see on this ledger that the rent was regularly received in split payments on those dates as the tenant testified and that late fees were not imposed, so I accept that this was the agreement. The tenant made a statement to the effect that he thought this agreement may be irrelevant legally, but I disagree; such an agreement can be binding.

20. The notice was issued on 25-October-2024. According to LL#2, at this point rent was overdue by more than a month. The tenants also submitted a ledger (T#29). This ledger is consistent with the conclusion that rent was overdue by more than 5 days as of 25-October-2024.
21. Rent was overdue by more than 5 days when the termination notice was issued. It gives a move out date of 5-November-2024, which is not less than 10 days after it was served. It therefore complies with s. 19(1)(b) of the *Act*.
22. The tenants testified that when the landlord provided them with the termination notice, they asked the landlord what amount they owed, and he responded with an incorrect total. He was unsure of the exact numbers but believed the landlord had identified the sum as being \$700.00 whereas the tenant believed the sum to be \$450.00. I note with the benefit of both rental ledgers that the total was in fact \$650.00. This conversation can be seen in text messages (T#27).
23. Regardless, the tenant's ledger shows that no further payment was made between 25-October-2024 and 5-November-2024. S. 19(2) of the *Act* is therefore not engaged. A payment of \$775.00 was made on 5-November-2024, however, s. 19(2) specifies that the full amount of overdue rent must be paid before the termination date, not on or before the termination date. There being some confusion regarding the exact amount owed does not negate the tenant's responsibility to make some payment. Even had the payment been made a day earlier, the \$775.00 is insufficient to constitute the full amount of rent due as a further \$775.00 became due as of 1-November-2024.
24. The termination notice complies with all relevant sections of the *Act* and is therefore valid.

Issue 2: Compensation for Inconvenience

Tenant's Position

25. The tenants seek \$240.00 in compensation for inconvenience suffered. This represents an approximation of the cost they incurred using a laundromat for the six-week period during which they say the dryer included as part of the rental agreement was not working. They testified that they brought the dryer to the landlord's attention on 3-October-2024 and it was not replaced until 14-November-2024.

Landlord's Position

26. The landlord acknowledged that the tenants notified him verbally of the dryer not functioning in early October at the same date and time he attended the property to respond to a leak. He stated that he understood it to be a low priority for them at that time due to the circumstances. He admitted that he "completely forgot about the dryer" once the leak was dealt with. He testified that it was brought to his attention again once the tenant's received the notice to terminate on 25-October-2024. He says he then purchased a new dryer on 28-October-2024 at Home Depot but was informed that they had none in stock and would not be able to deliver one until 12-November-2024. He testified that he informed the tenants of this at that time.

Analysis

27. T#27 contains an email chain including an email from the tenant on 25-October-2024 which states “additionally, I was wondering what you'd like to do in regards to the dryer. Not sure if you knew, but it's been >2 weeks since we let you know that the dryer broke.” This is consistent with the testimony of both parties. I accept all parties’ testimony as being truthful.
28. According to the Residential Tenancies Program Policies and Procedure Guide, Policy 4-002, when a tenant requires a landlord make repairs to the rental unit, they may give the landlord a written request to make the necessary repairs within a reasonable amount of time. A standardized form (titled Tenant’s Request for Repairs) is available from our office for this purpose but is not necessarily required. Where a landlord fails to complete the necessary repairs within a reasonable amount of time, the tenant may apply for a rebate in rent, a reduction in rent, or for rent to be paid to the Residential Tenancies Office in trust until the necessary repairs are completed (see also Policy 08-006). In the present case, there is no evidence of a written request for repairs before the 25-October-2024 email.
29. Considering the evidence in its totality, I am satisfied on a balance of probabilities that the landlord completed the requested repairs within a reasonable amount of time from the date of the written request. The tenant’s application for compensation for inconvenience fails.

Issue 3: Damages

Tenant’s Position

30. The tenant’s seek compensation for damages in the form of \$20.00 worth of firewood which they say the landlord took from the property when he attended the premises to mow the lawn.

Landlord’s Position

31. The landlord denies taking the firewood. He says that he was attempting to beautify the premises by moving the wood from the front yard to the back yard.

Analysis

32. The tenants did not state that they observed the landlord taking the firewood. Rather, they base their belief that the firewood was taken on their visual observation of the firewood in the backyard. They stated that this firewood all seemed to exhibit identical signs of weathering, whereas they would have expected that the firewood in the front yard would show different signs of weathering.
33. Respectfully, the tenants’ evidence is both speculative and tenuous. I am not satisfied on a balance of probabilities that the landlord took firewood from the premises.

Issue 4: Other Relief

34. The tenants selected the “other” section on their application with no specified amount of compensation sought. At the time of the hearing, I asked them to clarify what they were seeking. They said that they felt that the landlord had repeatedly contravened the rental agreement and/or the *Act* and they felt the issue must be addressed. They said they were looking for a legal ruling as to whether or not their rights were violated and, if so, they would like to see some consequences. They stated that they were not necessarily looking for money for themselves but for protection from people who would continue to breach the rights of tenants.
35. The purpose of this administrative tribunal is compensatory. In other words, orders are made with the goal being to, as far as is reasonably possible, place parties in the position they would be in had the other party not violated the rental agreement and/or the *Act*. Therefore, this tribunal only awards compensation for actual provable financial loss suffered.
36. In addition, policy 1-006 states that when “other” is selected as a heading, a claim amount is required. This is not merely a technical requirement. It serves an important purpose in law. Under the doctrine of procedural fairness, every participant is afforded certain rights in administrative hearings. One of these rights is the right of notice, which allows the parties to prepare for the hearing in the way they deem appropriate. This may include calculations as to how much time and money to expend in preparing to defend against a claim. Meaningful notice must include specifics that let the respondent know the amount claimed so they can make this judgment.
37. For the above reasons, I decline to consider the issue of whether or not other actions by the landlord have violated the rental agreement or the *Act*.

Decision

38. The valid termination notice gave a move out date of 5-November-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.
39. The tenants’ claim for compensation for inconvenience fails.
40. The tenants’ claim for compensation for damages fails.
41. The tenants’ claim for other relief fails.

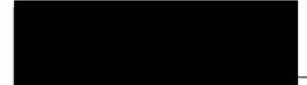
Summary of Decision

42. The tenants shall vacate the premises immediately.

43. The tenants 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.

17-January-2025

Date



Seren Cahill
Residential Tenancies Office