

Residential Tenancies Tribunal

Application 2024-1064-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 2-January-2024 at 9:15 am.
2. The applicant, [REDACTED] hereinafter referred to as the landlord, was represented at the hearing by [REDACTED], who 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 5-December-2024 at 9:37 am. The appropriate supporting document were also provided (LL#2). 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 application 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 landlords claim for \$2350.00 in unpaid rent. A rental ledger was provided (LL#3) showing that \$2350.00 was owing at the time of 1-November-2024. The landlord testified that since then, the tenant has made two payments of \$975.00 at the start of December

and January. They also testified that the monthly rent is \$975.00 which is due on the 1st of each month.

10. I accept the landlord's testimony that \$2350.00 is owing if one includes the entire monthly rent for January. However, this tribunal does not award future rent. A daily rate must be calculated.
11. The correct formula for determining a daily rate is found by multiplying the monthly rent by the 12 months of the year and dividing by the 365 days of the year. In the present case, the daily rate is $\$975.00/\text{month} \times (12 \text{ months}/365 \text{ days}) \approx \$32.05/\text{day}$. Multiplying this by the two days of January that had begun by the date of the hearing yields a total rent owing for January of \$64.11, for a total rent owing of \$1439.11.
12. The landlord's claim for unpaid rent succeeds in the amount of \$1439.11.

Issue 2: Vacant Possession

13. 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*.
14. The landlord submitted a copy of a termination notice (LL#4). LL#4 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.
15. The notice was signed by an agent of the landlord. It specifies the date on which the tenancy is to terminate and the tenant is to vacate the premises. The landlord testified that it was served on the tenant electronically in accordance with s. 35(2)(f). It therefore complies with s.19(4) of the *Act*.
16. The notice was issued on 8-October-2024. At this point, rent had been overdue for more than 5 days. It gives a move out date of 21-October-2024, which is not less than 10 days after it was served. It therefore complies with s. 19(1)(b) of the *Act*.
17. The termination notice complies with all relevant sections of the *Act* and is therefore valid.

Decision

18. The landlord's claim for unpaid rent succeeds in the amount of \$1439.11.
19. The valid termination notice gave a move out date of 21-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.
20. The tenancy has ended and the security deposit must be disposed of. In this case, the security deposit was \$731.25 and was paid on 9-February-2024. As the landlord is owed moneys, they may apply the security deposit against the sum owed.

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 interest rate of 1% annual for the years 2024 and 2025. Calculated to the date of the hearing, the total interest is therefore \$6.59.
22. The tenant shall continue to pay rent at the daily rate of \$32.05/day for each day they remain in the premises past 2-January-2025.
23. The landlord was successful in their application and is therefore entitled to have their reasonable hearing expenses covered. In this case, the landlord claims only the \$20.00 application fee.

Summary of Decision

24. The tenant shall vacate the premises immediately.
25. 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.
26. The tenant shall continue to pay rent at the daily rate of \$32.05/day for each day they remain in the premises past 2-January-2025.
27. The tenant shall pay to the landlord \$721.27 as follows:

Unpaid Rent.....	\$1439.11
Hearing Expenses.....	\$20.00
Less Security Deposit.....	(\$737.84)
 Total.....	 \$721.27

15-January-2025
Date


Seren Cahill
Residential Tenancies Office