

Residential Tenancies Tribunal

Application 2024-1098-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 19-December-2024 at 1:49 pm.
2. The applicant, [REDACTED], hereinafter referred to as the landlord, was represented at the hearing by [REDACTED] and [REDACTED], who attended via teleconference.
3. The respondent, [REDACTED], hereinafter referred to as the tenant, also attended via teleconference.

Preliminary Matters

4. The respondent acknowledged that she received notice of this hearing more than ten days in advance of the hearing date.

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 landlord claims \$11153.00 in unpaid rent. A rental ledger was provided in support of this claim (LL#1). The tenant agreed that this was true.
10. I accept the landlord's uncontradicted account. However, this includes the entire monthly rent of \$554.00 for the month of December. This tribunal does not award future rent. A daily rate must be calculated. 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 366 days of this year. In the present case, the daily rate is $\$554.00/\text{month} * (12 \text{ months} / 366 \text{ days}) = \text{~\$18.16/day}$. Multiplying by the 19 days of December that had begun by the date of the hearing, the total rent owing for December as of then is \$345.11.

11. The landlord's claim for unpaid rent succeeds in the amount of \$10944.11.

Issue 2: Vacant Possession

Landlord's Position

12. The landlord says that they have issued a valid termination notice, that the termination date on the notice has passed, and that they are therefore entitled to an order of vacant possession.

Tenant's Position

13. The tenant did not dispute any of the landlord's assertions. She says she did not pay the rent as she was unable to do so.

Analysis

14. 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*.
15. The landlord submitted a copy of a termination notice labeled LL#2. LL#2 is in writing but is not in the form prescribed by the minister. However, according to s. 22(f) of the *Interpretation Act*, RSNL 1990, 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 LL#2 invalid. LL#2 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.
16. 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 tenants via registered mail in accordance with s. 35(2)(e). It therefore complies with s. 19(4) of the *Act*.
17. The notice was issued on 2-October-2024. At this point, rent had been overdue for more than 5 days. It would be considered served on 7-October-2024 under s. 35(5) of the *Act*. It gives a move out date of 25-October-2024, which is not less than 10 days after it was served. It therefore complies with s. 19(1)(b) of the *Act*.
18. The termination notice complies with all relevant sections of the *Act* and is therefore valid.

Decision

19. The landlord's claim for unpaid rent succeeds in the amount of \$10944.11.

20. The valid termination notice gave a move out date of 25-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.
21. The tenant shall continue to pay rent at the daily rate of \$18.16/day for each day they remain in the premises after 19-December-2024.
22. 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

23. The tenant shall vacate the premises immediately.
24. 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.
25. The tenant shall continue to pay rent at the daily rate of \$18.16/day for each day they remain in the premises after 19-December-2024.
26. The tenant shall pay to the landlord \$10964.11 as follows:

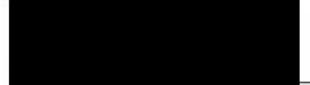
Unpaid Rent.....\$10944.11

Hearing Expenses.....\$20.00

Total.....\$10964.11

6-January-2025

Date


Seren Cahill
Residential Tenancies Office