

Residential Tenancies Tribunal

Application 2024-1202-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 5-February-2025 at 2:00 pm.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as the landlords, 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. I attempted to contact her by telephone prior to the hearing and was initially successful. She identified herself and advised she was aware the hearing was today but said she had never been served papers and was unaware of the time and was not prepared. I invited her to join the teleconference so I could more properly hear her request for a postponement but she did not agree. She mentioned not being served several times, sometimes specifically saying that she was never "handed anything." I advised that the landlord had said they had served her by email (under s. 42(3)(c) of the *Residential Tenancies Act, 2018* [the *Act*]) and she made it clear that she believed only personal service was acceptable. We became disconnected. I called back and the call went to voicemail. I left a message stating I could not guarantee a postponement would be granted and that if she wished to attend, she needed to call and provided the phone number and room number for the teleconference.
5. After returning to the teleconference the applicant stated he wished to continue with the hearing and added that he had also notified the tenant that she had been served by SMS text message. 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#30) with their application stating that they had served the tenant with notice of the hearing electronically on 22-January-2025 at 11:46 am. Proof of

service was also provided (LL#31). As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlords, I proceeded with the hearing in their absence.

Issues before the Tribunal

6. Should the landlord's claim for unpaid rent and late fees succeed?
7. Should the landlord's application for an order of vacant possession succeed?
8. Should the landlord's claim for the return of possessions succeed?
9. Should the landlord's claim for damages succeed?

Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).
11. 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

12. The landlords claim for \$1981.50 in unpaid rent and \$75.00 in late fees. A rental ledger was provided in support of this claim (LL#32). The landlord's testimony, supported by the ledger, is that the tenant has never been fully paid up in regard to rent. The rental ledger shows that the total balance due at the time the application was made was \$1857.50. This was accurate for December 2024. Since then, the landlord testified that he has received two separate payments of \$1388.00, and the monthly rent of \$1450/month became due twice more, leaving the total rent owed as \$1981.50.
13. I accept the landlord's uncontradicted testimony regarding the rent owing. However, this total includes the full rent for the month of February. This tribunal does not deal in future rent and therefore does not award rent for days which have not yet come to pass. A daily rate must be determined. 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 $\$1450/\text{month} * (12 \text{ months} / 365 \text{ days}) = \text{~\$47.67/day}$. Calculated for the date of the hearing, \$238.36 is due for February at the time of the hearing. The total rent due is therefore \$769.86 at the time of the hearing.
14. S. 15 of the *Act* states that where a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister. The minister has set the rate of late payment fees to be \$5.00 for the first day and \$2.00 for each day thereafter, to a maximum of \$75.00. As the rent has been overdue for more than 35 days, the maximum late payment fee of \$75.00 applies.
15. The landlord's claim for unpaid rent succeeds in the amount of \$769.86.
16. The landlord's claim for late payment fees succeeds in the amount of \$75.00.

Issue 2: Vacant Possession

17. 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*.
18. The landlord submitted a copy of a termination notice (LL#33). LL#33 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 does have a partially incorrect postal code, but this appears to be a mere typographical error and, in context, would not cause any confusion. It identifies itself as being issued under s. 19 of the *Act*. It therefore complies with s. 34.
19. The notice was signed by 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 the notice 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*.
20. The notice was issued on 27-December-2024. At this point, according to the uncontradicted testimony of the landlord, the rent had been overdue for more than 5 days. The notice gives a move out date of 9-January-2025, which is not less than 10 days after it was served. It therefore complies with s. 19(1)(b) of the *Act*.
21. LL#33 complies with all relevant sections of the *Act* and is therefore valid.

Issue 3: Return of Possessions

22. The landlord claims for the return of 17 personal possessions which they say the tenant removed from the premises. They testify that the items have a total value of \$5890.00. To succeed, the landlord must provide sufficient evidence to establish on a balance of probabilities to establish that the tenant took the items and to show the cost of replacement, and this must include documentary evidence where reasonably possible.
23. Items one, two, and fifteen are external and internal Senville Heat Pumps and a Mini-Split with a combined value of \$4100.00. LL#1 shows that these items were purchased 24-December-2022 for \$4829.98.
24. The third item is 2 36x40 inch vinyl windows, valued at \$530.00. LL#2 shows that a receipt for these items costing \$526.70.
25. Item nine is a Greenworks 10 amp 16-Inch Corded Snow Thrower valued at \$150. LL#3 shows it was purchased 15-March-2023 for \$163.01.
26. Item fourteen is a set of F. Corriveau International brown metal hardware, valued at \$50.00. LL#5 is a receipt showing it was purchased 24-December-2022 for \$40.36.
27. Item sixteen is 12 boxes of SPC rigid core vinyl flooring panels, valued at \$480.00. LL#4 is a receipt showing the cost of replacement panels is \$40.24 per unit, or \$482.86 for 12.
28. No evidence was provided showing the cost of replacing any of the other items.

29. The landlord testified that some of the items were taken by the tenant's boyfriend and placed in his own premises. LL#6 is an email dated 26-May-2024 from the tenant, from the email address she provided in the lease, stating that she believes the tires (item 5) and snowblower were taken by her boyfriend and placed in his house, and promising to return them in 30 days. LL#7 is another email from the tenant, wherein she says the windows were taken by her boyfriend to his house. LL#8 is another email from the tenant stating that both heat pumps are at her boyfriend's house. LL#9 is another email from the tenant stating that her boyfriend has a "kit" the landlord emailed her about. LL#10 includes another email where the tenant where the tenant admits she has the heat pumps and snow blower.
30. The landlord testified that the tenant told him that her boyfriend had taken items from the premises for safekeeping. This was done in May. This applies to all of the items the landlord claims for; except for items fifteen and sixteen, the Mini Split and the flooring panels.
31. The landlord testified that he became aware that items fifteen and sixteen went missing in December. He says that the tenant told him that people known to her broke into the apartment on 2-December-2024 while she was away and stole these items. The landlord continued that he spoke to his neighbour, who happens to have security cameras which can include in their field of view a portion of the rental premises. When they reviewed the footage, they found that a break-in did seem to occur on the date specified. However, the perpetrators took nothing at that time. They reviewed other footage and found that on 12-December-2024 unknown persons parked at the property. A person emerged from the rental premises to meet them and assisted them in removing the flooring and the Mini Split at this time. The security camera footage was provided as LL#12-24. It supports the landlord's testimony. I can clearly observe that a person from the premises emerges to greet the person who arrives in the car and they all work together to load the panels and the mini split into the vehicle.
32. Considering the evidence in its totality, I accept on a balance of probabilities that the tenant or a person they allowed on the premises took these items.
33. The landlord's claim for the return of possessions succeeds in the amount of \$5297.06.

Issue 4: Damages

34. The landlord claims \$250.00 in compensation for damages done to the basement door, which he says was cracked by the tenant or a person allowed on the property by the tenant. In accordance with Policy 09-003, to succeed in a claim for damages a landlord must provide sufficient evidence to show the extent of any damage, that the damage was caused by the tenant or a person the tenant allowed on the premises, and the cost of repair or replacement, and this evidence should include documentary evidence wherever possible. The landlord provided no documentary evidence of the crack in the basement door, nor any receipts, quotes, or invoices showing the cost of repair or replacement. This portion of the landlord's claim therefore fails on evidentiary grounds.

Decision

35. The landlord's claim for unpaid rent succeeds in the amount of 844.86.
36. The landlord's claim for late fees succeeds in the amount of \$75.00.
37. The valid termination notice gave a move out date of 9-January-2025. The tenancy agreement ended on that date. Insofar as the tenant still occupies the premise, she is doing so illegally. The landlord's application for an order of vacant possession succeeds.
38. The landlord's claim for the return of possessions succeeds in the amount of \$5297.06.
39. The landlord's claim for compensation for damages fails.
40. The tenancy has ended and the security deposit must be dealt with. In this case, security deposit was \$1000 and was received as of 5-January-2024. S. 16(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. For 2024 and 2025, the regulations prescribe a simple cumulative interest rate of 1% annual. Calculated to the date of the hearing, this results in a total interest of \$10.90.
41. As they are owed moneys, the landlord may apply the security deposit and interest valued at \$1010.90, against the sum owed.
42. The tenant shall continue to pay rent at the daily rate of \$46.67/day for each day she remains in the premises past 5-February-2025.

Summary of Decision

43. The tenant shall vacate the premises immediately.
44. 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.
45. The tenant shall continue to pay rent at the daily rate of \$46.67/day for each day she remains in the premises past 5-February-2025.
46. The tenant shall pay to the landlord \$5131.02 as follows:

Unpaid Rent.....	\$769.86
Late fees.....	\$75.00
Possessions taken.....	\$5297.06
Less Security Deposit.....	-(\$1010.90)
 Total.....	 \$5131.02

18-February-2025

Date

Seren Cahill
Residential Tenancies Office