

Residential Tenancies Tribunal

Application 2025-0085-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 9-October-2024 at 2:01 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, did not attend.

Preliminary Matters

4. The tenant was not present or represented at the hearing. I attempted to reach her by telephone at the start of the hearing and spoke to her briefly. I informed her of the hearing but we became disconnected. When I called her back, I reached her voicemail. I left her a message with instructions on how she could join the hearing by teleconference. 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#1) with their application stating that they had served the tenants with notice of the hearing via prepaid registered mail on 12-February-2025 at 5:24 pm. Checking the tracking number, [REDACTED] showed that the documents were received. 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 and late fees succeed?
6. Should the landlord's claim for an order of vacant possession succeed?
7. What is the proper disposition of the security deposit?

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).
9. 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

10. The landlords claim for \$1671 in unpaid rent, which they testify that the tenant owes. A rental ledger (LL#2) was provided in support of this.
11. I accept the landlord's uncontradicted testimony. However, this total includes the entire monthly rent of \$1095.00/month for March. 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 $\$1095/\text{month} * (12 \text{ months} / 365 \text{ days}) = \$36.00/\text{day}$. Calculated for the date of the hearing, \$180.00 is due for March at the time of the hearing. The total rent due is therefore \$756.00 at the time of the hearing.
12. The landlord's claim for unpaid rent succeeds in the amount of \$756.00.
13. S. 15(1) 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 for late fees at \$5.00 for the first day and \$2.00 for each day thereafter to a maximum of \$75.00. In this case, rent has been overdue for more than 35 days, so the maximum late payment fee applies.

Issue 2: Vacant Possession

14. In order to succeed in a claim for 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 (LL#3). LL#3 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.
16. 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 personally in accordance with s. 35(2)(a) of the *Act*. It therefore complies with s. 19(4) of the *Act*.
17. LL#3 is dated 25-November-2024 and was served on the tenant on 26-November-2024. At this point, according to the landlord's testimony, rent had been overdue for more than 5 days. The notice gives a move out date of 8-December-2024, which is not less than 10 days after it was served. It therefore complies with s. 19(1)(b) of the *Act*.
18. LL#3 complies with all relevant sections of the *Act* and is therefore valid.

Security Deposit

19. The landlord is owed moneys and may therefore apply the security deposit against the sum owed. In this case, the security deposit was \$562.66 and was received on or about 1-November-2016.
20. 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 the years 2016-2023 inclusive, the regulations prescribe a 0% interest rate. 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 \$6.63.

Decision

21. The landlord's claim for unpaid rent succeeds in the amount of \$756.00.
22. The landlord's claim for late fees succeeds in the amount of \$75.00.
23. The valid termination notice gave a move out date of 8-December-2024. The tenancy agreement ended on that date. Insofar as the tenant still occupies the premise, they are doing so illegally. The landlord's application for an order of vacant possession succeeds.
24. The landlord may apply the security deposit and interest, valued at \$569.29, against the sum owed.
25. The tenant shall continue to pay rent at the daily rate of \$36.00/day for each day they remain in the premises past 5-March-2025.

Summary of Decision

26. The tenant shall vacate the premises immediately.
27. 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.
28. The tenant shall continue to pay rent at the daily rate of \$36.00/day for each day she remains in the premises past 5-March-2025.
29. The tenant shall pay to the landlord \$261.71 as follows:

Unpaid Rent.....	\$756.00
Late fees.....	\$75.00
Less Security Deposit.....	-(\$569.29)
 Total.....	 \$261.71

14-March-2025

Date

[REDACTED]
Seren Cahill
Residential Tenancies Office