

Residential Tenancies Tribunal

Application 2025-0200-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 15-April-2025 at 9:05 am.
2. The applicant, [REDACTED], hereinafter referred to as the landlord, attended via teleconference.
3. The respondent, [REDACTED], hereinafter referred to as the tenant, also attended via teleconference.

Preliminary Matters

4. The tenant asked for a postponement on the day of the hearing, which the landlord opposed. The landlord provided a sworn affidavit (LL#1) stating that he served the tenant notice of the hearing electronically on 4-April-2025. Proof of service (LL#2) was also provided. The address of service used matched the one provided by the tenant on the rental agreement (LL#3). As the tenant was properly served and further delay would prejudice the landlord, I denied the postponement request.

Issues before the Tribunal

5. Should the landlord's claim for unpaid rent and late fees succeed?
6. Should the landlord's claim 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 for unpaid rent and late fees in the amounts of \$4800.00 and \$95.00 respectively and provided a rental ledger in support of this (LL#4). This includes the full monthly rent of \$1600/month for the months of February-April 2025. The tenant acknowledged that he has not paid rent for this time period.
10. This tribunal does not deal in future rent and can therefore only award rent to the date of the hearing. A daily rate must be calculated. The correct formula for determining a daily rate is found by multiplying the monthly rate by the 12 months of the year and dividing by its 365 days. In this case, the daily rate is $\$1600.00 * (12 \text{ months} / 365 \text{ days}) = \$52.60/\text{day}$.

Calculated to the date of the hearing, the total rent owing for April is therefore \$789.04. Total rent owing as of the date of the hearing is \$3989.04.

11. 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 of late fees at \$5.00/day for the first day and \$2.00/day for each day thereafter to a maximum of \$75.00. As rent has been overdue for more than 35 days, the maximum late fee applies.

Issue 2: Vacant Possession

12. 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*.
13. The landlord submitted a copy of a termination notice labelled LL#5, which is a notice under s. 19 dated 7-February-2025 with a move out date of 18-February-2025. He also testified that two other termination notices were served. One was a s. 18 three-month notice issued after LL#5 with a termination date of the end of April, and the other was a subsequent s. 19 notice issued sometime on or about 7-March-2025.
14. Residential Tenancies Program Policy and Procedure Guide policy 7-001 states that if a termination notice is already in place and a second notice is issued by either party whereby the termination date is earlier than that specified in the first notice, then so long as this second notice is valid, the tenant is required to vacate on the date specified in the second notice. If a termination notice is already in place and a second notice is issued by the same person whereby the termination date is later than that specified in the first notice, then the person issuing the second notice has thereby indicated that they are intending the tenancy to be extended to the date set out in the second notice. The party receiving this second notice is no longer required to abide by the termination date set out in the first notice and the termination date in the second notice is the date that the tenant is required to vacate. The person who served the 2 notices cannot have the first notice enforced.
15. In other words, by issuing the second and third notices, the landlord forfeited his ability to rely on the first notice. The landlord did not provide a copy of the second or third notice and could not recall all relevant information from them at the time of the hearing. In the absence of all relevant information, I am unable to rule on the validity of these two subsequent notices.
16. The landlord was not able to provide a valid termination notice and his application for vacant possession therefore fails.

Decision

17. The tenant shall pay to the landlord 3989.04 in unpaid rent and \$75.00 in late fees. For clarity, it should be noted that this decision does not affect the tenant's responsibility to pay additional rent should he remain in the premises beyond the date of the hearing.

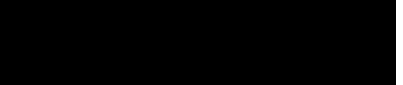
Summary of Decision

18. The tenant shall pay to the landlord \$4064.04 as follows:

Unpaid Rent.....	\$3989.04
Late Fees.....	\$75.00
Total.....	\$4064.04

28-April-2025

Date


Seren Cahill
Residential Tenancies Office