

Residential Tenancies Tribunal

Application 2025-0208-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 10-April-2025 at 2:00 pm.
2. The applicant, [REDACTED], hereinafter referred to as the landlord, was represented at the hearing by their counsel [REDACTED] and [REDACTED] of [REDACTED], who attended via teleconference.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as the tenants, did not attend.
4. [REDACTED] and [REDACTED], representatives of the landlord, also attended via teleconference and the latter provided testimony.

Preliminary Matters

5. The tenants were 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 a pair of affidavits (LL#1 and LL#2) with their application stating that they had served the tenants with notice of the hearing electronically on 27-March-2025. The appropriate supporting documents were also provided as part of LL#1 and LL#2. The electronic addresses used were provided by the tenants as part of the rental agreement (LL#3). 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

6. Should the landlord's claim for unpaid rent succeed?

7. Should the landlord's claim for an order of vacant possession succeed?

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 landlord claims for unpaid rent for the months of March and April. They provided a rental ledger (LL#4) and a duly sworn affidavit (LL#5) which states that, among other things, the landlord was notified on 5-March-2025 that the tenants put a stop payment order on their rent payments and did not arrange an alternate form of payment. The witness added that no payments had been received since the affidavit was sworn. I accept this uncontradicted testimony.
11. The landlord's claim includes the full monthly rent of \$5060.00/month for the month of March, rent for the month of April pro-rated to the date of the hearing, and \$46.00 of NSF fees. S. 15(2) of the *Act* allows landlords to claim NSF fees equal to those charged to them by a financial institution.
12. The rental agreement states that the monthly rent is \$4860/month. The remaining \$200/month regards the rent of a parking space in a lot attached to the building containing the residential premises. This parking space was rented as part of a separate agreement (LL#7). I note that the rental agreement includes the rental of a parking space in the same lot under its section 7. Section 14 of the rental agreements states that the landlord agrees to monitor and maintain the parking spaces. The witness testified that the landlord does not rent parking stalls to non-tenants. Considering all of the above, I am satisfied that while it takes the form of a separate contract, the agreement regarding the parking stall is part of the residential tenancy relationship between the parties and therefore under the jurisdiction of this tribunal.
13. 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 $\$5060.00 * (12 \text{ months} / 365 \text{ days}) = \$166.36/\text{day}$. Calculated to the date of the hearing, the total rent owing for April is therefore \$1663.56. Including the NSF fees and rent for the month of March, the total amount due is \$6769.56.

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 labelled LL#6. LL#6 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 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 the notice was served on the tenant by sliding it under their door in accordance with s. 35(2)(d) of the *Act*. It therefore complies with s. 19(4) of the *Act*.

17. LL#6 is dated 25-March-2025. The affidavit states that it was served on the same date. At this point, the rent had been overdue for more than 5 days. The notice gives a move out date of 5-April-2025. It therefore complies with s. 19(1) of the *Act*.
18. LL#6 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 \$6769.56.
20. The valid termination notice gave a move out date to be read as 25-March-2025. 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.
21. The tenants shall continue to pay rent at the daily rate of \$166.36/day for each day they remain in the premises after 10-April-2025.
22. The tenancy has ended and the disposition of the security deposit must be determined. As the landlord is owed moneys, they may apply the security deposit against the sum owed. The security deposit is \$3625.00 which was received on 30-January-2025.
23. 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 year 2025. Calculated to the date of the hearing, this results in interest totaling \$12.34.
24. The landlord was successful in their application and therefore may seek to be reimbursed for their reasonable hearing expenses. They seek the \$20.00 application fee in addition to legal costs, which they seek in the amount of \$1500.00. They submit that legal costs exceeded \$2500.00 and that partial costs ought to be awarded as the proceeding was one of significant importance to the parties. They note that counsel attended the hearing and personally prepared affidavits as well as assisting witnesses in the same.
25. I acknowledge that the submissions by the landlord must have taken some time to prepare. They address the issues comprehensively and clearly.
26. In considering hearing expenses beyond the typical, this tribunal refers to the Residential tenancies Program Policies and Procedure Guide Policy 12-001. In accordance with this policy, I take note of the following factors:
 - The landlord was successful in the full amount of their claim.
 - The applicant was successful in each issue.
 - The applicant did not contribute to the dispute.
 - The proceeding was short. It could not have been simplified further.
 - There was no counterclaim.

27. Overall, these factors do tend to support the claim of higher-than-normal costs. However, there are other factors to be considered. This tribunal is intended to resolve disputes without having to enter into expensive and lengthy court proceedings. The only cost an applicant is required to expend is the \$20.00 filing fee. Self-represented persons represent the majority of parties before this tribunal.
28. Policy 12-001 recommends that with respect to the costs of hiring a lawyer to prepare for the hearing, or to represent a party at a hearing, those costs, or a portion of those costs, should only be awarded where it is found that the other party has engaged in unreasonable conduct, meaning bad faith conduct meant to frustrate the process of dispute resolution. This is in line with authorities such as s. 17.1(2) *Statutory Powers Procedure Act*, RSO 1990, c S.22, which, while not binding upon this tribunal, represent a codification of principles of administrative law. In the absence of such unreasonable conduct, I decline to grant legal costs.

Summary of Decision

29. The tenant shall vacate the premises immediately.
30. 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.
31. The tenant shall continue to pay rent at the daily rate of \$166.36/day for each day they remain in the premises after 10-April-2025.
32. The tenants shall pay to the landlord \$3152.22 as follows:

Unpaid Rent.....	\$6769.56
Hearing Expenses.....	\$20.00
Less Security Deposit....	-(\$3637.34)
Total.....	\$3152.22

28-April-2025

Date

Seren Cahill
Residential Tenancies Office