

Residential Tenancies Tribunal

Application 2023-0899-NL

Decision 23-0899-00

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 11-December-2023.
2. The applicant, [REDACTED] hereinafter referred to as the landlord, was represented by [REDACTED] who attended by 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 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 an affidavit with their application stating that they had served the tenant with notice of the hearing, by pre-paid registered mail [REDACTED] [REDACTED] on 11-December-2023. The registered mail tracking indicates that the tenant did not retrieve their mail. In accordance with the Residential Tenancies Act, 2018 registered mail is considered served 5 days after it has been sent. 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. Is the landlord owed for unpaid rent?
6. Is the landlord owed for late fees?
7. Should the landlord be granted an order of vacant possession?

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 in this decision are subsections 19(1) and (4), as well as section 34 of the *RTA 2018* as follows:

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.

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: Rent

10. The landlord testified that the tenant owes them \$1688.00. A rental ledger (LL#1) was provided which supports this claim. The rental ledger shows that the tenant periodically makes partial payments but nevertheless has consistently had a balance owing since 01-June-2023.
11. Included in the amount due is the rent for the month of December. However, this tribunal does not consider future rent. Rent can only be awarded up to the date of the hearing. As the hearing did not coincide with the end of a rental period, it must be pro-rated on a daily basis. Rent is \$865.00 a month. The correct formula to calculate the daily rate is (Monthly Rate)*12/365. Plugging in the monthly rate, this formula provides a daily rate of ~\$28.44/day. Rent from 01-December-2023 to 11-December-2023 inclusive is valued at \$312.82. Correcting for this adjustment, the amount owing as of the time of the hearing is \$1135.82.

Issue 2: Late fees

12. LL#1 shows that the tenant has had a balance owed since 01-June-2023.
13. Section 15 of the Act states:

Fee for failure to pay rent

15. (1) 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 prescribed the following:

Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed

- (a) ***\$5.00 for the first day the rent is in arrears, and***
- (b) ***\$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00.***

14. The landlord is therefore awarded \$75.00 in late fees.

Issue 3: Vacant Possession

15. In order to receive an order for vacant possession a landlord must have issued a valid termination notice. The landlord provided a copy of a termination notice (LL#2) dated 21-September-2023. This termination notice is in writing in the form prescribed by the minister. It contains the name and address of the tenant. It identifies the residential premises it regards. It states it is a termination notice under s. 19. It therefore conforms with s. 34 of the Act.
16. The notice is signed by an agent of the landlord. It states a termination date. The landlord testified that the notice was served personally on the tenant, in accordance with s. 35(2)(a) of the Act. It therefore meets the requirements under s. 19(2) of the Act.

17. It has been established that the tenant has owed the landlord rent since 01-June-2023. LL#2 was issued on 21-September-2023 and gives a termination date of 03-October-2023. It therefore complies with the requirements of s. 19(1) of the *Act*.
18. The termination notice complies with all relevant sections of the *Act* and so is valid.

Decision

19. The tenant owes the landlord \$1135.82 in unpaid rent and \$75 in late fees.
20. The tenancy ended on 03-October-2023. In so far as the tenant is still occupying the premises, they are doing so unlawfully. The landlord's application for an order of vacant possession succeeds.
21. As the residential tenancy has ended, the security deposit must be dealt with. The landlord testified that the security deposit was in the amount of \$640.00. Since the landlord is owed moneys by the tenant, they are entitled to apply the security deposit against moneys owed.
22. As the landlord was successful in their application they are entitled to costs. They provided a receipt for the cost of registered mail required to serve the tenant, valued at \$13.44. They are granted this \$13.44 and the \$20.00 application fee for a total of \$33.44.

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 landlord is granted an order of possession.
26. The tenant shall pay to the landlord \$605.26 as follows:

Rent.....	\$1135.82
Late fees.....	\$75.00
Hearing Costs.....	\$34.44
Less Security deposit.....	-(\$640.00)
Total.....\$605.26	

03-January-2024

Date

Seren Cahill
Residential Tenancies Office