

Residential Tenancies Tribunal

Application 2023-1128-NL

Decision 23-1128-00

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 2-January-2023.
2. [REDACTED] appeared via teleconference on behalf of the applicant, [REDACTED] [REDACTED] hereinafter referred to as the landlord.
3. The respondent, [REDACTED] 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 (LL#1) with their application stating that they had served the tenant with notice of the hearing, by pre-paid registered mail [REDACTED] [REDACTED] on 14-December-2023. The registered mail tracking indicates that the tenant received and signed for this notice. 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. Should the landlord's claim for overdue rent and late fees be granted?
6. Should the landlord be granted an order of vacant possession?

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 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 and Late Fees

9. The landlord testified that the tenant owes \$2400.00 in overdue rent and \$75.00 in late fees. A rental ledger (LL#3) was provided in support of this. The ledger and the landlord's testimony both say that the tenant has owed unpaid rent since 1-November-2023. The minister has set late fees at five dollars for the first day and two dollars every day after that to a maximum amount of \$75.00, which is reached in 31 days. As rent was unpaid for more than 30 days, the maximum late fees apply.

Issue 2: Vacant Possession

10. 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#4) dated 14-November-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.
11. The notice is signed by an agent of the landlord. It states a termination date. The landlord testified that the notice was served by placing it on the tenant's front door, in accordance with s. 35(2)(c) of the Act. It therefore meets the requirements under s. 19(2) of the Act.
12. It was established via the rental ledger and the landlord's testimony that the tenant has owed the landlord rent since 1-November-2023. LL#4 was issued on 14-November-2023 and gives a termination date of 27-November-2023. That gives more than ten clear days' notice. It therefore complies with the requirements of s. 19(1) of the Act.
13. The termination notice complies with all relevant sections of the Act and so is valid.

Decision

14. The tenant owes the landlord \$2400.00 in unpaid rent and \$75.00 in late fees. The tenancy ended on 27-November-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.
15. The landlord is owed moneys and has applied to retain the security deposit and apply it against the amount owed. They are entitled to do so. The security deposit is in the amount of \$536.25.
16. As the landlord was successful in their application they are entitled to costs in the amount of the \$20.00 hearing fee, as well as the cost of registered mail in the amount of \$14.90. LL#1 page 2 shows the receipt for this cost.

Summary of Decision

17. The tenant shall vacate the premises immediately.

18. 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.
19. The landlord is granted an order of possession.
20. The tenant shall pay to the landlord \$1973.65 as follows:

Rent.....\$2400.00
Late fees.....\$75.00
Hearing Costs.....\$34.90
Security Deposit.....-(536.25)

Total.....\$1973.65

10-January-2024

Date

[Redacted]
Seren Cahill
Residential Tenancies Office