

## Residential Tenancies Tribunal

Application 2023-1135-NL

Decision 23-1135-00

Seren Cahill  
Adjudicator

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### Introduction

1. Hearing was held on 21-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 (LL#1) with their application stating that they had served the tenant with notice of the hearing electronically on 05-December-2023 to an address provided by the tenant on the rental agreement as a method of contact. 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 application for unpaid rent and late fees be granted?
6. Should the landlord be granted an order for 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 \$1109.00 at the time of the hearing. A rental ledger (LL#2) was provided which supports this claim. The ledger shows a balance of \$784.00 owed at the time of 06-November-2023, including \$75 of late fees. This was

amended at the hearing to reflect rent for the month of December, set at \$1100, and a payment by the tenant on 18-December-2023 of \$700.

### **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#3) dated 8-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 electronically to an email address provided by the tenant, in accordance with s. 35(2)(f) 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 01-October-2023. LL#3 was issued on 8-November-2023 and gives a termination date of 19-November-2023. That gives 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 \$1109.00 in unpaid rent and \$75 in late fees.
15. The tenancy ended on 19-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.
16. 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 \$768.75. Since the landlord is owed moneys by the tenant, they are entitled to apply the security deposit against moneys owed.
17. As the landlord was successful in their application they are entitled to costs in the amount of the \$20 hearing fee.

### **Summary of Decision**

18. The tenant shall vacate the premises immediately.
19. 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.
20. The landlord is granted an order of possession.

21. The tenant shall pay to the landlord \$438.25 as follows:

Rent.....	\$1109.00
Late fees.....	\$75.00
Hearing Costs.....	\$20.00
Security Deposit.....	-(765.75)
 Total.....	 \$438.52

12-January-2024

Date

[Redacted]  
Seren Carrill  
Residential Tenancies Office