

Residential Tenancies Tribunal

Application 2023-1171-NL

Decision 23-1171-00

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 15-January-2023.
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 landlord's claim originally included partial rent payments for the months of August and July 2023. The tenant disputed these sums and indicated he had supporting evidence but had been unable to access it for several technical reasons. Given that the tenant claimed to be unable to access the evidence previously to the hearing, I was inclined to allow the tenant extra time to gather this evidence. The landlord indicated she would rather abandon this part of the claim rather than suffer further delay. In accordance with her wishes, her claim is hereby amended to exclude any rent for the months of July and August 2023.

Issues before the Tribunal

5. Is the landlord owed rent and/or late fees?
6. Should the landlord be granted an order of vacant possession?
7. What is the disposition of the security deposit?

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 tenant acknowledges he owes rent for the months of September, October, November, December, and January. Rent was set at \$1200 a month, for a total of \$6000.

11. The minister has prescribed a late fee rate of \$5 for the first day and \$2 for every day after, to a maximum of \$75. As rent has been overdue for more than 30 days, the maximum late fee is warranted.

Issue 2: Vacant Possession

12. The landlord produced a termination notice (LL#1) which was served by posting it on the tenant's door and through email. 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*.
13. The notice is signed by the landlord. It states a termination date. The landlord testified that the notice was served in accordance with s. 35(1)(c) of the *Act*. It therefore meets the requirements under s. 19(2) of the *Act*.
14. It was acknowledged that the tenant has owed the landlord rent since at least 1-September-2023. LL#3 was issued 23-November-2023. It gives a termination date of 4-December-2023. That provides more than ten clear days' notice. That gives ten clear days' notice. It therefore complies with the requirements of s. 19(1) of the *Act*.
15. The termination notice complies with all relevant sections of the *Act* and so is valid.

Issue 3: Security Deposit

16. There was a security deposit of \$900. As the landlord is owed moneys, they may apply the security deposit towards this sum.

Decision

17. The tenant owes the landlord \$6000 in unpaid rent and \$75 in late fees.
18. The tenancy ended on 4-December-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.
19. As the landlord was successful in their application, they are entitled to costs in the amount of the \$20 application fee.

Summary of Decision

20. The tenant shall vacate the premises immediately.
21. 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.
22. The landlord is granted an order of possession.

23. The tenant shall pay to the landlord \$5195.00 as follows:

Rent..... \$6000.00

Late fees..... \$75.00

Hearing Costs..... \$20.00

Security Deposit... -(\$900.00)

Total..... \$5195.00

26-January-2024

Date



Seren Cahill

Residential Tenancies Office