

Residential Tenancies Tribunal

Application 2023-1192-NL

Decision 23-1192-00

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 22-January-2024 at 2:01 pm.
2. The applicant, [REDACTED] hereinafter referred to as the landlord, was represented by [REDACTED] who attended via 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 9-January-2024. The appropriate supporting documents were also provided. 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 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 Act 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

9. The landlord testified that the tenant owes \$2300 in unpaid rent, consisting of the full rent of \$575 for each of the months of September, October, November, and December. A rental ledger (LL#3) was provided in support of this.

10. The landlord also claims for late fees in the amount of \$300. The minister has prescribed the rate of late fees to be \$5 for the first day and \$2 for each day thereafter, to a maximum of \$75. As more than 30 days have passed since the tenant has owed rent, the maximum late fee of \$75 is appropriate.

Issue 2: Vacant Possession

11. In order to receive an order for vacant possession, a landlord must have given the tenant a valid termination notice. The landlord submitted LL#2, a termination notice for cause. 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.
12. The notice is signed by the landlord. It states a termination date. It was served in accordance with s. 35(2)(f) of the Act. It therefore meets the requirements under s. 19(2) of the Act.
13. The tenant has owed the landlord rent since 1-September-2023. The termination notice was issued on 10-October-2023. It gives a move out date of 23-October-2023. That provides more than 10 clear days of notice. It therefore complies with the requirements of s. 19(1) of the Act. The termination notice complies with all relevant sections of the Act and so is valid.

Decision

14. The tenant owes the landlord \$2300 in unpaid rent and \$75 in late fees.
15. The tenancy ended on 23-October-2023. Insofar as 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 landlord was successful in their application they are entitled to costs in the amount of the \$20 application fee.

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 \$2395 as follows:

Rent.....\$2300
Late fees.....\$75
Hearing Costs.....\$20

Total.....\$2395

31-January-2024

Date


Seren Cahill
Residential Tenancies Office