

Residential Tenancies Tribunal

Application 2024-0004-NL

Decision 24-0004-00

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 25-January-2024.
2. The applicant, [REDACTED] hereinafter referred to as the landlord, was represented at the hearing by [REDACTED] who attended by teleconference.
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. I left a message on their voicemail with the number in case they wished to join. 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 personally on 13-January-2024. 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 rent and late fees be granted?
6. Should the landlord's claim for vacant possession be granted?

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 last time the tenant paid rent was 1-September-2023. The tenant therefore owes the monthly \$1000 rent for each of the months of October,

November, and December. This was supported by LL#3, a rental ledger submitted by the landlord. This evidence was uncontested.

10. The minister has prescribed the rate for late fees to be \$5 for the first day and \$2 for every additional day to a maximum of \$75. As rent has been overdue for more than 30 days, the maximum late fee applies.

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)(a) 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-October-2023. The landlord testified that he served the tenant the notice 29-December-2023, although the signature at the bottom is dated 10-January-2024. It gives a move out date of 29-December 2023. The landlord testified he accidentally switched the two dates. No response was received from the tenant. I do not conclude that this error would have caused no confusion for the recipient, nor that the recipient would have understood the intended meaning of the notice.
14. The listed termination date does not give more than 10 clear days from the date the notice was served. The termination notice is therefore invalid.

Decision

15. The tenant shall pay to the landlord \$3000 in unpaid rent and \$75 in late fees.
16. The termination notice dated 10-January-2024 is invalid and therefore the landlord's claim for an order of vacant possession fails.

Summary of Decision

17. The landlord's claim for an order for vacant possession fails.

18. The tenant shall pay to the landlord \$3075 as follows:

Unpaid rent.....	\$3000
Late fees.....	\$75
Total.....	\$3075

9-February-2024
Date



Seren Cahill
Residential Tenancies Office