

## Residential Tenancies Tribunal

Application 2024-0115-NL

Decision 24-0115-00

Seren Cahill  
Adjudicator

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### Introduction

1. Hearing was held on 7-March-2024 at 9:16 am.
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.
4. The respondent, [REDACTED] hereinafter known as the occupant, did not attend.

### Preliminary Issues

5. This claim was initially for \$1000 in unpaid rent and \$100 in late fees. However, the applicant acknowledged she had since received \$1000 of the unpaid rent and the \$75 in late fees, while another \$1000 in rent has become due with the passing of time. At no point was the rent fully paid up, according to the landlord. The application is therefore amended to reduce the amount of late fees sought to \$75 (as more days have elapsed since the rent balance became negative).
6. The occupant did not attend, and I was unable to reach them by telephone before 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 of service (LL#4) showing they served the occupant notice of the hearing electronically on 17-February-2024. Proof of service was also provided (LL#3). As the occupant had been properly served and further delay would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.

7. Initial questioning and review of the rental agreement (LL#2) showed that the occupant was not a tenant of the landlord, but rather a sublessee of the tenant. There is no contractual relationship between the landlord and the occupant.

### **Issues before the Tribunal**

8. Should the landlord's claim for unpaid rent succeed?
9. Should the landlord be granted an order for vacant possession?

### **Legislation and Policy**

10. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).
11. 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 and Late Fees**

- 12. There was no dispute of the facts between the parties regarding rent. It was acknowledged that the monthly rent of the rental premises is \$1000 and that, at the time of the hearing, \$500 was owing for both the months of February and March.
- 13. Despite the tenant's acknowledgement, this tribunal does not award rent for days which have not yet come to pass. The correct formula for determining a daily rate is found by multiplying the monthly rent by 12, then dividing by the 366 days in this year. In this case, the daily rate is therefore \$32.79/day. The \$1000 the tenant has already paid covers the rent for the month of February. At the time of the hearing, the tenant had remained living at the premises for 7 days. Multiplying by the daily rate tells us the tenant therefore owed, at the time of the hearing, \$229.53.
- 14. The tenant shall also pay to the landlord the daily rate for each day they remain at the premises until the tenancy agreement ends.
- 15. The maximum allowable late fees as prescribed by the Minister is \$75. As the landlord has acknowledged the receipt of \$75 in late fees, I decline to grant any further amount.

### **Issue 2: Vacant Possession**

- 16. For a landlord to receive an order of vacant possession, they must have issued a valid termination notice. To be valid, a termination notice must comply with all relevant sections of the *Act*.
- 17. A termination notice (LL#1) was provided. It is in the form prescribed the minister. It contains the name and address of the recipient. It identifies the residential premises which it regards. It states that it is given under s. 19 of the *Act*. It therefore complies with s. 34.
- 18. LL#1 was signed by the landlord. It states the move out date on which the tenancy ends. It was served personally in accordance with s. 35(2)(a) of the *Act*. It therefore complies with s. 19(4).
- 19. The termination notice was issued on 7-January-2024. This is five clear days from when the rent was due on 1-January-2024. Parties acknowledge that rent was overdue at this point. The termination date given is 20-January-2023, which is not less than ten clear days after the date then notice was issued. The notice therefore complies with s. 19(1)(b)(ii).
- 20. The landlord acknowledges that on 18-January-2024, the tenant provided the rent owing for January 2024. S. 19(2) reads as follows:

(2) Notwithstanding subsection (1), where the tenant pays the full amount of the overdue rent, including a fee under section 15, before the date specified in the notice under paragraph (1)(a) or (b), the rental agreement is not terminated and the tenant is not required to vacate the residential premises.

The fees under s. 15 are late fees. The landlord stated that she asked for the late fees early in January and the tenant did not contradict this. Parties acknowledge the late fees were not received until 29-February-2024. As the full amount of rent and late fees owing were not both paid before the termination date, subsection (2) does not apply.

21. The notice LL#1 complies with all relevant provisions of the *Act* and is therefore valid.

### **Decision**

22. The landlord's claim for unpaid rent succeeds in the partial amount of \$229.53 for the month of March.
23. The tenant shall pay to the landlord the daily rate of \$32.79 for each day they remain at the premises after 7-March-2024.
24. The landlord's claim for late fees fails.
25. The tenancy ended on 20-January-2024. Insofar as the tenant is still residing at the premises, they are doing so illegally. The landlord's application for an order of vacant possession succeeds.

### **Summary of Decision**

26. The tenant shall vacate the premises immediately.
27. The tenant shall pay to the landlord any costs charged to the landlord, by the Office of the High Sherriff, should the landlord be required to have the Sheriff enforce the attached Order of Possession.
28. The landlord is granted an order of possession.
29. The tenant shall pay to the landlord \$229.53 in overdue rent.
30. The tenant shall pay to the landlord the daily rate of \$32.79 for each day they remain at the premises after 7-March-2024.

1-April-2024  
Date

  
Seren Cahill  
Residential Tenancies Office