

Residential Tenancies Tribunal

Application 2024-0118-NL

Decision 24-0118-00

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 11-March-2024 at 9:04 am.
2. The applicant, [REDACTED] hereinafter referred to as the landlord, was represented by [REDACTED] who appeared 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, personally, on 3-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 unpaid rent succeed?
6. Should the landlord's application for an order of vacant possession succeed?

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 and referred to in this decision are sections 19 and 35 of the *Act*, as follows:

Notice where failure to pay rent

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.

(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.

(3) Subsection (2) does not apply where notice is given to a tenant under paragraph (1)(a) or (b) more than twice in a 12 month period.

(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.

Requirements for notices

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: Unpaid Rent

9. The landlord testified that the tenant owes \$1865.50 in unpaid rent. They provided a rental ledger (LL#2) in support of this testimony. I accept the landlord's uncontradicted evidence on a balance of probabilities. However, this amount includes the full rent for the month of March. This tribunal can only award rent to the date of the hearing. The monthly rent is \$263.00. The correct formula for a daily rate is found by multiplying the monthly rate by (12/366), which results in a daily rate of \$8.62. 11 days have passed in March. 11 multiplied \$8.62 is \$94.82. The tenant therefore owes \$94.82 for the month of March, in addition to the \$1602.50 owed for the previous months, for a total of \$1697.32.
10. The tenant will owe the daily rate for every day they remain at the premises after the date of the hearing.

Issue 2: Vacant Possession

11. In order to receive an order for vacant possession, a landlord must have issued a valid termination notice. To be valid, a termination notice must comply with all relevant sections of the Act. The landlord submitted a termination notice (LL#3) they had issued on the tenant.
12. This notice was in writing but not in the form prescribed by the minister. However, s. 22(f) of the *Interpretation Act, 1990* reads as follows:

Implied provisions

22. In an Act or regulation

...

(f) where a form is prescribed, deviations from the form not affecting the substance nor calculated to mislead, do not invalidate the form used;

13. Not using the form prescribed by the minister is therefore insufficient to render the notice invalid. LL#3 contains the name and address of the recipient. It identifies the residential premises for which it is given. It identifies that it is a notice under s. 19 of the Act. It therefore complies with s. 34 of the Act.
14. LL#3 was signed by the representative of the landlord who provided it. It states the date on which the rental agreement terminates and the tenant is required to vacate the premises. It was served personally on the tenant in accordance with s. 35(2)(a) of the Act. It therefore complies with s. 19(4).
15. The landlord testified that the rental agreement was a month-to-month agreement. LL#2 shows that the tenant has owed rent since 1-May-2023. The notice was issued on 2-January-2024. Rent was therefore overdue for more than 5 days when LL#3 was issued, in compliance with s. 19(1)(b). The termination date, 31-January-2024, was not less than 10 days after the notice was issued.
16. LL#3 complies with all relevant sections of the Act and is therefore valid.

Decision

17. The landlord's claim for unpaid rent succeeds in the partial amount of \$1697.32.
18. The tenant shall pay to the landlord a daily rate of \$8.62 for each day they remain on the premises after 11-March-2023.
19. The termination notice dated 3-January-2024 is valid.
20. The tenancy ended on 31-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.
21. As the landlord has succeeded in their application, they are entitled to their hearing expenses. In this case, the expenses consist solely of the \$20 application fee.

Summary of Decision

22. The tenant shall vacate the premises immediately.
23. The landlord is granted an order of possession.
24. 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.
25. The tenant shall pay to the landlord a daily rate of \$8.62 for each day they remain on the premises after 11-March-2023.
26. The tenant shall pay to the landlord \$1717.32 as follows:

Rent arrears..... \$1697.32
Hearing expenses..... \$20.00

Total..... \$1717.32

28-March-2024

Date

Seren Cahill
Residential Tenancies Office