

Residential Tenancies Tribunal

Application 2024-0139-NL

Decision 24-0139-00

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 20-March-2024 at 9:17 am.
2. The applicants, [REDACTED] hereinafter referred to as the landlords, attended via teleconference.
3. The respondents, [REDACTED] hereinafter referred to as the tenants, did not attend.

Preliminary Matters

4. The tenants were 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 landlords submitted a pair of affidavits (LL#1 and LL#2) with their application stating that they had served the tenant with notice of the hearing via registered mail on 20-February-2024. The tracking number, [REDACTED] was provided. Checking the number showed that the mail was sent on the day stated above and a notice was left for the recipients giving instructions on how to pick up the package, but they never did so. The appropriate supporting documents were also provided (LL#3). As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlords, I proceeded with the hearing in their absence.
5. The landlord's initial application applied for \$1700.00 in unpaid rent for the months of January and February. The landlord sought to amend this on the day of the hearing to add rent for the month of March in the amount of \$850. There being no issue of prejudice to the respondent, the application is hereby amended.

Issues before the Tribunal

6. Should the landlord's claim for overdue rent be granted?
7. Should the landlord's application for an order of vacant possession be granted?

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 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: Overdue Rent

- 10. The landlords testified that the tenant owes \$850 in unpaid rent for each of the months of January, February, and March, for a total of \$2550. I accept the landlords' uncontradicted evidence on a balance of probabilities. However, this tribunal cannot award rent beyond the date of the hearing.
- 11. When rent must be calculated for part of a month, the daily rate must be determined. The correct formula for determining the daily rate in the year 2024, a leap year, is found by multiplying the monthly rent by (12/366). The monthly rate of \$850 results in a daily rate of \$27.87. Rent for March up to the date of the hearing is therefore \$27.87/day * 20 days = \$557.40. Total rent owed is therefore \$2257.40.
- 12. Further, the tenant shall owe the daily rate for each day from the hearing until the landlord regains possession of the property.

Issue 2: Vacant Possession

- 13. 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 landlords submitted a termination notice (LL#4) they had issued on the tenant.
- 14. LL#4 is in the form prescribed by the minister. LL#4 contains the name and address of the recipients. 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*.
- 15. LL#4 was signed by landlord. It states the date on which the rental agreement terminates and the tenant is required to vacate the premises. It was served electronically on the tenant in accordance with s. 35(2)(f) of the *Act*. It therefore complies with s. 19(4).
- 16. The landlords testified that the rental agreement was a month-to-month agreement which began on 1-January-2024. The landlords' testimony was that the tenant never paid rent. The notice was issued on 3-February-2024. Rent was therefore more overdue for more than 5 days when LL#4 was issued, in compliance with s. 19(1)(b). The

termination date, 15-February-2024, was not less than 10 days after the notice was issued.

17. LL#4 complies with all relevant sections of the *Act* and is therefore valid.

Decision

18. The landlord's claim for unpaid rent succeeds in the amount of \$2257.40.
19. The tenant shall pay to the landlord the daily rate of \$27.87 for each day until the landlord regains possession of the property.
20. The termination notice dated 3-February-2024 is valid.
21. The tenancy ended on 15-February-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

22. The tenant shall vacate the premises immediately.
23. 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.
24. The landlord is granted an order of possession.
25. The tenant shall pay to the landlord \$2257.40 in overdue rent.
26. The tenant shall in addition pay to the landlord a daily rate of \$27.87 for each day they occupy the property after 20-March-2024.

5-April-2024

Date



Seren Cahill
Residential Tenancies Office