

Residential Tenancies Tribunal

Application 2024-0191-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 9-April-2024.
2. The applicant, [REDACTED], hereinafter referred to as the landlord, attended via teleconference. His wife, [REDACTED], also attended via teleconference as a witness.
3. The respondent, [REDACTED], hereinafter referred to as the tenant, also attended via teleconference. His friend, [REDACTED], also attended via teleconference to help him present his case.

Issues before the Tribunal

4. Should the landlord's application for unpaid rent be granted?
5. Should the landlord's application for an order of vacant possession be granted?

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).
7. 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

Landlord's Position

8. The landlord testified that the tenant owes \$2600 in unpaid rent, which represents a monthly rent of \$650 for the four months of December, January, February, and March.

Tenant's Position

9. The tenant testified that he paid his monthly rent of \$650 in March 2023. He said that after this, the landlord told him he was behind on rent, so he paid the landlord another \$1250. This, he said, was an overpayment. He says he received receipts for these payments. He says that while going through his receipts in January, he realized his

overpayment and told the landlord he had already paid for January and showed the landlord the receipt. He then had to leave the house. He testified that when he returned, the receipt was gone. There were, he said, no signs of forced entry. He also said he paid \$900 in February, with \$250 towards March's rent. This receipt, he said, was dated 30-February-2024.

Analysis

10. Both parties were given leave to submit rent receipts after the hearing. Both parties were advised that depending on what was received, it might be necessary to recall the hearing to allow one or the other party to respond to the evidence. Both parties produced largely the same evidence, different photos of the same receipts (TT#1 and LL#1). The only difference was that the tenant included two or three more receipts than the landlord did. These extra receipts matched the handwriting of the landlord. Therefore, it was not necessary to recall the hearing.
11. The landlord did not provide a rental ledger and the dates on the receipts were unreliable (one was dated the 30th of February, another appeared to be dated November 2028). The copies provided by the landlord were also partially illegible. Nevertheless, adding every receipt provided a total amount of money paid to the landlord of \$11550. Counting from the start of the tenancy, September 2022, to March 2024 results in a total of 19 months, for which the ultimate amount of rent owed would be \$12350. The difference is therefore \$800, or \$1300 once the \$500 security deposit is added.
12. The landlord claimed for \$2600. The tenant claimed that he owed money only for April as he had previously paid an additional \$1250. Neither claim perfectly aligns with the evidence before me, though the tenant's is off by only \$50.
13. On its face, the tenant's story seems irregular. However, after viewing the totality of the evidence, it seems less so. Judging by the receipts, it seems it has not been unusual for the tenant to make irregular payments multiple times even in the same day. I certainly do not believe anyone stole a rent receipt from the tenant, but I cannot rule out the possibility that it was simply misplaced.
14. Regardless, the onus is always on the applicant to prove their claim on a balance of probabilities. I find that this onus has not been met. The landlord's claim for unpaid rent therefore fails.

Issue 2: Vacant Possession

15. The landlord's application for an order of vacant possession was predicated on LL#2, a termination notice for failure to pay rent issued on 12-February-2024. As I have not found that the tenant owed rent on 12-February-2024, this application cannot succeed.

Decision

16. The landlord's claim for unpaid rent fails.
17. The landlord's claim for vacant possession fails.

23-May-2024

Date


Seren Cahill
Residential Tenancies Office