

Residential Tenancies Tribunal

Application 2024-0267-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 9-May-2024 at 10 am.
2. The applicant, [REDACTED], hereinafter referred to as the landlord, was represented at the hearing by [REDACTED], who attended 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 via registered mail on 10-March-2024. The tracking number, [REDACTED], was provided. Checking the number showed that the mail was sent on the day stated above and was received. The appropriate supporting documents were also provided as part of LL#1. 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 be granted?
7. What is the proper disposition of the security deposit?

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 34 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

- 10. The landlord testified that the tenant owes \$1076 in unpaid rent. A rental ledger (LL#2) was provided in support of this testimony. I accept the landlord's uncontradicted testimony.
- 11. However, the rental ledger shows that the \$1076 total includes the entire monthly rent of \$1095.00 for the month of May. This tribunal does not deal in future rent and can therefore only award rent for days that have come to pass at time of the hearing.
- 12. The correct formula to determine the daily rent is found by multiplying the monthly rent by the 12 months in a year divided by the 366 days in this leap year. Daily rate= $\$1095/\text{month} \times (12 \text{ months}/366 \text{ days}) = \sim \$35.90/\text{day}$.
- 13. Rent for the first 9 days of May is therefore \$323.11. As the balance prior to the beginning of May was -\$19.00, this leaves a total amount owing of \$304.11.
- 14. The tenant must continue to pay the daily rate of \$35.90/day for each day they remain on the premises past 9-May-2024.

Issue 2: Vacant Possession

- 15. 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.
- 16. LL#3 is in the form prescribed by the minister. It 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*.
- 17. 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).
- 18. LL#3 was issued on 12-March-2024. The landlord testified that the lease was month-to-month. At that point payment had been overdue for more than five days, in accordance with s.19(1)(b). The move out date was specified as 26-March-2024, more than ten clear days after the notice was issued. The tenant did not pay the full amount owing until 27-March-2024.

19. The termination notice complies with all applicable sections of the *Act* and is therefore valid.

Issue 3: Security deposit

20. The landlord is owed moneys and therefore is entitled to apply the security deposit against it. The security deposit in this case is \$562.66.

Decision

21. The landlord's claim for unpaid rent succeeds in the amount of \$323.11 in rent.
22. The termination notice with the move out date of 26-March-2024 is valid.
23. The tenancy terminated on 26-March-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.
24. As the landlord has succeeded in their application, they are entitled to their hearing expenses. In this case, the expenses consist of the \$20 hearing fee in addition to \$14.90 for registered mail, for which a receipt was provided.

Summary of Decision

25. The tenant shall vacate the premises immediately.
26. The landlord is granted an order of possession.
27. The tenant shall pay the daily rate of \$35.90/day for each day they remain in the premises past 9-May-2024.
28. 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.
29. The landlord shall pay to the tenant \$204.65 as follows:

| | |
|-----------------------|-----------|
| Rent..... | \$323.11 |
| Hearing expenses..... | \$34.90 |
| Security Deposit..... | -\$562.66 |
| Total..... | -\$204.65 |

30-May-2024
Date


Seren Cahill
Residential Tenancies Office