

Residential Tenancies Tribunal

Application 2024-0380-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 21-May-2024 at 9:15 am.
2. The applicant, [REDACTED], hereinafter referred to as the landlord, attended via teleconference.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as the tenants, did not appear.

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 landlord submitted an affidavit (LL#1) with their application stating that they had served the tenants with notice of the hearing, electronically, on 10-May-2024. The electronic address used was given by the tenants in the rental agreement (LL#2) as an address for the receipt of documents. As the tenants were 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 overdue 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

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 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: Overdue Rent

9. The landlord testified that the tenants owe \$2800 rent for the months of April and May. I accept the landlord's testimony. However, 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.
10. 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=\$1400/month*(12 months/366 days)≈\$45.90/day.
11. Rent for the first 21 days of May is therefore \$963.90. As the tenants also owed \$1400 for the month of April, this leaves a total amount owing of \$2363.90.
12. The tenants must continue to pay the daily rate of \$45.90/day for each day they remain on the premises after 21-May-2024.

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 landlord submitted a termination notice (LL#4) they had issued on the tenants.
14. LL#4 is in the form prescribed by the minister. It 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 and 24 of the *Act*. It therefore complies with s. 34 of the *Act*.
15. LL#4 was signed by the landlord who provided it. It states the date on which the rental agreement terminates, and the tenants are required to vacate the premises. It was served on the tenants electronically in accordance with s. 35(2)(f) of the *Act*. It therefore complies with s. 19(4).
16. LL#4 was issued on 29-April-2024. The lease is a fixed term lease. At the point it was issued, payment had been overdue for more than 5 days, in accordance with s. 19(1)(b). The move out date was specified as 10-May-2024, ten clear days after the notice was issued.
17. The termination notice complies with all necessary sections of the *Act* to qualify as a valid notice under s. 19. Therefore, I need not consider its validity under s. 24.

Issue 3: Security Deposit

18. The landlord is owed moneys and therefore is entitled to apply the security deposit against it. The security deposit in this case is \$700.

Decision

19. The landlord's claim for unpaid rent succeeds in the amount of \$2363.90.
20. The termination notice with the move out date of 10-May-2024 is valid.
21. The tenancy terminated on 10-May-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.
22. 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 alone.

Summary of Decision

23. The tenant shall vacate the premises immediately.
24. The tenant shall pay the daily rate of \$45.90/day for each day they remain in the premises past 10-May-2024.
25. 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.
26. The landlord is granted an order of possession.
27. The tenant shall pay to the landlord \$1683.90 as follows:

Rent.....	\$2363.90
Hearing expenses.....	\$20.00
Security Deposit.....	-\$700.00
 Total.....	 \$1683.90

30-May-2024

Date

[Redacted]
Seren Cahill
Residential Tenancies Office