

Residential Tenancies Tribunal

Application 2024-0387-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 14-May-2024 at 3:15 pm.
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, was not in attendance.

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 2-May-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 application 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 \$9300 in rent, and a rental ledger (LL#2) was provided in support of this. I accept the landlord's uncontradicted sworn testimony.
10. The \$9300 total includes the entire \$1050 rent due for the month of May. This tribunal does not deal in future rent and can therefore only award rent up to the date of the hearing. A daily rate must be calculated.
11. The correct formula for determining a daily rate is found by multiplying the monthly rent by the 12 months of the year and divided by the 366 days of this year. In this case that would be $\$1050/\text{month} * (12 \text{ months} / 366 \text{ days}) = \$34.43/\text{day}$. Rent for the first 14 days of May therefore equals \$482.02.
12. The total amount of rent due to date is therefore \$8732.02.
13. The tenant shall continue pay rent at the daily rate of \$34.43/day until the date they vacate the premises.

Issue 2: Vacant Possession

14. 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.
15. 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.
16. 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 on the tenant in accordance with s. 35(2)(d) of the Act. It therefore complies with s. 19(4).
17. LL#3 was issued on 25-January-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 5-February-2024, ten clear days after the notice was issued.
18. The termination notice complies with all applicable sections of the Act and is therefore valid.

Decision

19. The landlord's claim for unpaid rent succeeds in the amount of \$8732.02.

20. The tenant shall pay the daily rate of \$34.43/day for each day they remain in the premises past 14-May-2024.
21. 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.
22. The landlord is granted an order of possession.
23. The tenant shall pay to the landlord \$8732.02 in overdue rent.

5-July-2024

Date


Seren Cahill
Residential Tenancies Office