

Residential Tenancies Tribunal

Application 2024-0391-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 12-Jun-2024 at 2:01 pm.
2. The applicant, [REDACTED], hereinafter referred to as the landlord, attended via teleconference.
3. The respondent, [REDACTED], 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 23-May-2024. The tracking number, [REDACTED] was provided. Checking the number showed that the mail was sent on the day stated above and was refused by the recipient and returned to sender. The appropriate supporting documents were also provided (LL#2, LL#3). 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?

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 \$8200 in unpaid rent and provided a rental ledger (LL#4) in support of this.
10. The landlord testified that the monthly rent was set at \$700. He also submitted that at times the tenant would make repairs or replace broken items in lieu of rent, and he accepted this. He said he was "fine with it until it started getting a bit too extreme," and now seeks to recover the full difference between the amount of rent agreed upon and the amount of money actually collected each month.
11. Having agreed to accept services or purchases in lieu of rent, the landlord cannot now go back and recover the full rent payments. If he did so, he would have both the rent in money and the benefit of the repairs done by the tenant. This would be double recovery.
12. The landlord testified that he received no rent from September 2023 to the date of the hearing. He also said the tenant refused to have any contact with him. This constitutes 9 full months of rent at \$700 a month for a total of \$6300, plus part of the month of June. A daily rate must be calculated. 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 $\$700/\text{month} \times (12 \text{ months}/366 \text{ days}) = \sim \$22.95/\text{day}$. Rent for the first 12 days of June is therefore \$275.41, for a total amount due of \$6575.41 at the time of the hearing.
13. The tenant shall continue to pay rent at the daily rate of \$22.95/day until the date they vacate the premises.

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#6) they had issued on the tenant.
15. LL#6 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#6 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)(c) of the *Act*. It therefore complies with s. 19(4).

17. LL#6 was issued on 2-May-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 13-May-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 \$6575.41.
20. The tenancy ended on 13-May-2024. Insofar as the tenant is still residing at the premises, they are doing so illegally. The landlord's claim for an order of vacant possession succeeds.
21. The landlord was successful in his application and is therefore entitled to have his reasonable hearing expenses covered. In this case his hearing expenses consisted of the \$20 application fee and \$14.83 for the cost of registered mail, for which a receipt was provided.

Summary of Decision

22. The tenant shall pay the daily rate of \$22.95/day for each day they remain in the premises past 13-May-2024.
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 \$6610.24 as follows:

Unpaid Rent.....	\$6575.41
Hearing Expenses.....	\$34.83
Total.....	\$6610.24

11-July-2024
Date


Seren Cahill
Residential Tenancies Office