

## Residential Tenancies Tribunal

Application 2024-0420-NL  
2024-0435-NL

Seren Cahill  
Adjudicator

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### Introduction

1. Hearing was held on 19-June-2024 at 9:05 am.
2. The applicant, [REDACTED] hereinafter referred to as the landlord, attended via teleconference.
3. The respondent, [REDACTED], hereinafter referred to as the tenant, also attended via teleconference.

### Issues before the Tribunal

4. Should the landlord's claim 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 claims for the full monthly rent of \$1600 for the months of April, May, and June, for a total amount of rent due of \$4800. A rent ledger (LL#1) was provided in support of this. He says he received no rent for these months. He says there was no agreement to do repairs in lieu of rent.

#### Tenant's Position

9. The tenant testified that her husband performed work for the landlord in lieu of rent for the month of April. She says that there is an ongoing police investigation between

herself and the landlord. She testifies that while previously she paid the landlord cash in person, she is no longer comfortable doing so. She says she asked the landlord for an email address multiple times in May to do an e-transfer but he refused to provide one. The only response he provided was to say that he wanted them to leave.

### **Analysis**

10. In regard to whether or not there was an agreement to do repairs in lieu of rent, this is a "he said, she said" situation, where two parties present testify under oath or solemn affirmation and contradict each other. There is no external evidence to support either party. Neither party's story contains internal contradictions. It is not possible for a person to provide documentary evidence that an agreement does not exist. It may be possible for a person to provide documentary evidence that an agreement does exist.
11. Regarding the evidence in its totality, I find on a balance of probabilities that there was no agreement to substitute repairs in lieu of rent. In the absence of such an agreement, rent is owed for the month of April. The tenant does not dispute that rent is owed for the months of May and June.
12. However, this tribunal does not award future rent. At the time of the hearing the month of June had not elapsed, and we therefore cannot award rent for the full month of June. A daily rate must be calculated.
13. The correct formula to calculate a daily rate is found by multiplying the monthly rent by 12 and then dividing by the 366 days of this year. In this case,  $\$1600/\text{month} * (12 \text{ months} / 366 \text{ days}) = \sim \$52.46/\text{day}$ .
14. Rent due for the first 19 days of June is therefore \$996.72.

### **Issue 2: Vacant Possession**

#### Landlord's Position

15. The landlord seeks an order of vacant possession based on the termination notice issued 10-May-2024. He denies refusing payment and says other payment methods might have been acceptable.

#### Tenant's Position

16. The tenant submits that repairs were done in lieu of rent for April, and that no termination notice should be granted in regard to the rent for the month of May because the landlord refused payment.

### **Analysis**

17. 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#2) he had served on the tenant.

18. LL#2 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*.
19. LL#2 was signed by 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).
20. LL#2 was issued on 10-May-2024. The lease was month-to-month. At that point payment for the month of April had been overdue for more than five days, in accordance with s. 19(1)(b). The move out date was specified as 21-May-2024, ten clear days after the notice was issued.
21. As I have determined the April rent was overdue, the landlord's supposed refusal to accept the subsequent month's rent is irrelevant.
22. The termination notice complies with all applicable sections of the *Act* and is therefore valid.

#### **Decision**

23. The landlord's claim for unpaid rent succeeds in the amount of \$4196.72.
24. The termination notice dated 10-May-2024 is valid.
25. The tenancy agreement terminated on 21-May-2024. In so far as the tenant is still residing at the rental premises, they are doing so illegally. The landlord's request for an order of vacant possession is granted.
26. The tenant shall continue to pay the rent at a daily rate of \$52.46/day for each day past 19-June-2024 they continue to reside at the premises.

#### **Summary of Decision**

27. The tenant shall pay to the landlord \$4196.72 in unpaid rent.
28. The tenant shall continue to pay the rent at a daily rate of \$52.46/day for each day past 19-June-2024 they continue to reside at the premises.
29. 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.
30. The landlord is granted an order of possession.

11-July-2024

Date

Seren Cahill  
Residential Tenancies Office