

Residential Tenancies Tribunal

Application 2024-0548-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 3-September-2024 at 9:28 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.

Preliminary Matters

4. The respondent acknowledged they received notice of this hearing more than ten days before the hearing date.
5. The applicant sought to amend her application on the hearing date to add a claim for damages in terms of stress and suffering as well as rent for the month of September. However, neither of these claims were included in the notice of application which was submitted to the tenant. It is important that no matters are heard for which notice was not provided, so that the respondent has the opportunity to prepare for the hearing. Accordingly, the amendment is denied.

Issues before the Tribunal

6. Should the landlord's claim for an order of vacant possession succeed?
7. Should the landlord's claim for unpaid utilities succeed?
8. Should the landlord's claim for late fees succeed?
9. What is the proper disposition of the security deposit?

Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).
11. Also considered and referred to in this decision are s. 18(2), 18(9), and s. 34 of the *Act*, as follows:

Notice of termination of rental agreement

18. ...

- (2) A landlord shall give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises
 - (a) not less than 4 weeks before the end of a rental period where the residential premises is rented from week to week;
 - (b) not less than 3 months before the end of a rental period where the residential premises is rented from month to month; and
 - (c) not less than 3 months before the end of the term where the residential premises is rented for a fixed term.

...

- (9) In addition to the requirements under section 34, a notice under this section shall
 - (a) be signed by the person providing the notice;
 - (b) be given not later than the first day of a rental period;
 - (c) state the date, which shall be the last day of a rental period, on which the rental agreement terminates and the tenant intends to vacate the residential premises or the date by which the tenant is required to vacate the residential premises; and
 - (d) 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: Vacant Possession

Landlord's Position

12. The landlord submits that they provided a valid termination notice, the move out date of the notice has elapsed, and that she is therefore entitled to vacant possession of the rental premises.

Tenant's Position

13. The tenant testified that he was not served a termination notice until he was given notice of this hearing in late August 2024.

Analysis

14. In order to receive an order of vacant possession, a landlord must first provide a valid termination notice. A termination notice is valid if it complies with all relevant sections of the *Act*.
15. The landlord provided a termination notice marked as LL#1. LL#1 is in writing in the form prescribed by the minister. It contains the name and address of the recipient. It identifies the residential premises for which it was given. It states the section of the *Act* it was given under as s. 18(2)(b). It therefore complies with s. 34.
16. LL#1 was signed by the landlord who provided it. The landlord testified that it was given 28-May-2024, which is three days before the first day of the relevant rental period. The tenant denies this and testified he did not receive the notice until he was served the notice of the application. After considering the evidence in its totality, I accept the landlord's testimony on a balance of probabilities. It states a move out date of 31-August-2024, which is the last day of the rental period. The landlord testified that it was served on the tenant personally in accordance with s. 35(2)(a). It therefore complies with s. 18(9) of the *Act*.
17. LL#1 provides three full months notice as required by s. 18(2)(b) of the *Act*.
18. LL#1 complies with all relevant sections of the *Act* and is therefore valid.

Issue 2: Utilities

Landlord's Position

19. The landlord claims for unpaid utilities in the amount of \$109.00. This represents one quarter of the internet and electricity bills for the months of May, June, and July.

Tenant's Position

20. The tenant submitted that all bills previous to 12-July-2024 have been settled and that as of that date the landlord's account was closed and the tenant and his roommates have

started a new account in their own names. Evidence of this new account was provided, but there was no evidence that the previous bills had been settled.

Analysis

21. The landlord provided evidence of the internet bills for May, June, and July (LL#2 pages 3-4), in the amounts of \$146.05, \$146.05, and \$51.82 respectively. There was no documentary evidence submitted by the landlord regarding the cost of electricity for those months. The rental agreement (LL#3) specifies that the tenant is responsible for one quarter of the internet and electricity bills.
22. $(\$146.05 + \$146.05 + \$51.82) / 4 = \86.08 . The landlord's claim for unpaid utilities succeeds in the amount of \$86.08.

Issue 3: Late fees

Landlord's Position

23. The landlord claims \$271 in late fees.

Tenant's Position

24. The tenant represented that as his rent is subsidized by social services, he has no direct control over when rent is paid.

Analysis

25. S. 15 of the *Act* specifies that when a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister. In this case, the rental agreement specifies that the rent is to be paid on the 20th of the month immediately before the rental period.
26. The landlord provided evidence of the tenant's payments (LL#2, pages 5-9). This evidence shows that some amount of rent has been overdue since 20-November-2023. The minister has set the rate of late fees as \$5.00 for the first day and \$2.00 for each day thereafter, to a maximum of \$75.00. As rent has been overdue for more than 35 days, the maximum late fee applies.
27. The landlord's claim for late fees succeeds in the amount of \$75.00.

Security Deposit

28. As the landlord is owed moneys, they are entitled to apply the security deposit against the sum owed. In this case, the security deposit was \$412.
29. S. 14(7) of the *Act* states that a landlord shall credit interest to the tenant on the full amount or value of the security deposit, at the rate prescribed by the regulations, during the time the security deposit is held by the landlord. The regulations prescribe an

interest rate of 0% for 2023 and a simple cumulative interest rate of 1% annual. Calculated to the date of the hearing, that results in a total interest of \$2.79.

Decision

30. The termination notice with a move out date of 31-August-2024 is valid. As the termination date has elapsed, the tenancy agreement has been terminated. Insofar as the tenant is still residing at the premises, he is doing so illegally. The landlord's application for an order of vacant possession succeeds.
31. The landlord's claim for unpaid utilities succeeds in the amount of \$86.08.
32. The landlord's claim for late fees succeeds in the amount of \$75.00.
33. The landlord may apply the moneys owed against the security deposit plus interest which totals \$414.79.
34. As the landlord's application was successful, they are entitled to be compensated for their reasonable hearing expenses. In this case, they claim only the \$20.00 application fee.

Summary of Decision

35. The tenant shall vacate the premises immediately.
36. 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.
37. The landlord is granted an order of possession.
38. The landlord shall pay to the tenant \$233.71 as follows:

Security Deposit.....	\$414.79
Utilities.....	-(\$86.08)
Late fees.....	-(\$75.00)
Hearing expenses.....	-(\$20.00)
 Total.....	 \$233.71

16-September-2024

Date


Seren Cahill
Residential Tenancies Office