

Residential Tenancies Tribunal

Application 2024-0580-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 29-July-2024 at 2:00 pm.
2. The applicant, [REDACTED], hereinafter referred to as the landlord, was represented by [REDACTED], who attended via teleconference.
3. The respondent, [REDACTED], hereinafter referred to as the tenant, 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 electronically on 15-July-2024 at 2:52 pm. The appropriate supporting documents were provided (LL#2). 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 be granted?
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

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).
9. Also discussed and referred to in this decision are sections 19(1), 19(4), and 34 of the *Act*, reproduced below:

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.

...

(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

10. The landlord testified that the rental agreement was a month-to-month with rent set at \$900 a month. They say the tenant owes \$1800 in unpaid rent for the months of June and July and offered a rental ledger (LL#3) in support of this.
11. I accept the landlord's uncontradicted testimony. However, this tribunal does not award future rent. Therefore in order to determine the amount owing for July, a daily rate must be calculated.
12. The correct formula for determining a daily rate is found by multiplying the monthly rent by the 12 months of the year and dividing by the 366 days of this year. In this case, $\$900.\text{month} \times (12 \text{ months} / 366 \text{ days}) = \sim \$29.51/\text{day}$.
13. Multiply the daily rate by the 29 days of July that had begun by the time of the hearing gives a total of \$855.74, for a total amount of rent due of \$1755.74.
14. The tenant shall pay to the landlord the daily rate for each day they remain in the premises after 29-July-2024.

Issue 2: Vacant Possession

15. In order to receive an order of 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 copy of a termination notice (LL#4) they served on the tenant.
16. LL#4 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 is given. It identifies that it is issued under s. 19 of the *Act*. It therefore complies with s. 34.
17. LL#4 was signed by a representative of the landlord. It states the date on which the rental agreement is to terminate. It was served electronically in accordance with s. 35(2)(f) of the *Act*. It therefore complies with s. 19(5).
18. LL#4 was issued on 25-June-2024. At this time, rent was overdue for more than five days. The termination date given is 6-July-2024, not less than ten days after the date it was issued. LL#4 therefore complies with s. 19(1) of the *Act*.
19. LL#4 is valid.

Issue 3: Security Deposit

20. The landlord is owed moneys and is therefore entitled to apply the security deposit against the sum owed. In this case, the initial security deposit was \$400.

21. S. 14(7) of the *Act* says 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 the relevant period previous to 2024, and a cumulative simple interest rate of 1% annual for the year of 2024. This results in interest of \$2.32, for a total of \$402.32.

Decision

22. The landlord's application for unpaid rent succeeds in the amount of \$1800.
23. The tenant shall continue to pay rent at the daily rate of \$29.51/day for each day they remain in the premises past 1-August-2024.
24. The landlord's application for an order of vacant possession succeeds.
25. The landlord may apply the security deposit with interest against the sum owed.
26. As the landlord was successful in their application, they are entitled to have their reasonable hearing expenses covered. In this case, their hearing expenses consisted of the \$20 application fee and \$20 for the services of a Commissioner of Oaths, for which a receipt was provided.

Summary of Decision

27. The tenant shall continue to pay rent at the daily rate of \$29.51/day for each day they remain in the premises past 29-July-2024.
28. 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.
29. The landlord is granted an order of vacant possession.
30. The tenant shall pay to the landlord \$1393.42 as follows:

Unpaid Rent.....	\$1755.74
Hearing Expenses.....	\$40.00
Less Security Deposit.....	-\$402.32)
Total.....	\$1393.42

15-August-2024

Date


Seren Cahill
Residential Tenancies Office