

Residential Tenancies Tribunal

Application 2024-0621-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 12-August-2024 at 1:45 pm.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as the landlord, attended via teleconference.
3. The respondents, [REDACTED] and [REDACTED], also attended via teleconference.

Preliminary Matters

4. The respondents both acknowledged they received notice of this hearing more than ten days before the hearing date.
5. Parties agreed to the following facts:
 - The landlords rented the rental premises to the first respondent listed above.
 - The first respondent rented the premises or part of it to the second respondent.
 - Social services pays the second respondent's rent directly to the first respondent.
 - The first respondent pays rent directly to the landlord.
6. Based on the above, it is clear that a sublease has been created, notwithstanding the fact that the first respondent did not obtain the landlord's prior written consent to do so as required under s. 7 of the *Residential Tenancies Act, 2018* (the *Act*). The landlords have no contractual relationship with the subtenant.
7. Hereinafter the first respondent named above is referred to as the tenant. The second respondent named above is hereinafter referred to as the subtenant. The subtenant has an interest in the issues and her submissions were heard, but she is not a party.
8. The landlords asked at the time of the hearing to amend their claim to recover unpaid utilities. Reviewing the documents served on the respondents, I am not satisfied that the

respondents had sufficient notice of this new remedy sought and therefore cannot rule on this issue at this time. A new application must be made. It may also be noted that this will allow the landlords to assess the full total of utilities owed, which they noted at the time of the hearing they had not yet determined.

9. The landlords initially sought \$1375 in unpaid rent. During the hearing, however, they amended the amount to \$975.

Issues before the Tribunal

10. Should the landlord's claim for unpaid rent succeed?
11. Should the landlord's application for an order of vacant possession succeed?

Legislation and Policy

12. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Act*.
13. Also considered and referred to in this decision are sections 19(1), 19(4), and 34 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.

...

(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

14. The landlord seeks \$975 in unpaid rent. They testify that rent has not been paid for the month of July.

Tenant's Position

15. The tenant admits that he has not paid rent for the month of July. He testified that he has not received the subtenant's rent from social services.

Analysis

16. The subtenant testified that social services told her they had sent the rent for the month of July to the tenant. She does not receive any direct notification of these payments nor is she given a record of the payments.
17. Notwithstanding the sublease, the tenant entered an agreement to pay rent to the landlords each month. This is a contractual obligation which is not dependent on the circumstances of the sublease.
18. The landlords' claim for unpaid rent succeeds in the amount of \$975.

Issue 2: Vacant Possession

19. 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*.
20. The landlord submitted a copy of a termination notice (LL#1). It is in writing in the form prescribed by the minister. It contains the names and address of the recipients. It

identifies the residential premises it regards. It identifies itself as being issued under s. 19 of the *Act*. It therefore complies with s. 34.

21. LL#1 was signed by the landlord. It specifies the date the date on which the tenancy is to terminate and the tenant is to vacate the premises. It was served electronically on the tenant in accordance with s. 35(2)(f) of the *Act*. It therefore complies with s. 19(4) of the *Act*.
22. The landlords testify and I accept that this is a month-to-month rental agreement with rent due on the 1st of each month. LL#1 is dated 17-July-2024 and was issued on the same day. At this point, rent was overdue by more than five days. It gives a move out date of 28-July-2024, which is not less than ten days after it was served. It therefore complies with s. 19(1)(b) of the *Act*.
23. LL#1 complies with all relevant sections of the *Act* and is therefore valid.

Decision

24. The landlords' claim for unpaid rent succeeds in the amount of \$975.00.
25. The valid termination notice gave a move out date of 28-July-2024. The tenancy agreement ended on that date. Insofar as the tenant still has possession of the premises, he does so illegally. The landlords' application for an order of vacant possession succeeds.
26. The tenancy has ended and the disposition of the security deposit must be determined. As the landlords are owed moneys, they are entitled to apply the security deposit against the sum owed. In this case, the security deposit was \$675.
27. According to s. 14(7) of the *Act*, 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 interest rate prescribed by the regulations was 0% for the relevant period prior to 2024. For 2024, the regulations prescribe a simple cumulative 1% annual rate of interest. Calculated to the date of the hearing, this results in a total amount of interest accrued of \$4.17.
28. The security deposit plus interest are valued at \$679.17.
29. The landlords were successful in their claim and so are entitled to have their reasonable hearing expenses covered. In this case, the landlords seek the \$20 application fee, \$150 for the cost of a process server, as well as a claim to be reimbursed for the expenditures they say they made in an effort to help the tenant/subtenant move out. This last cost may be compensable but is not, properly speaking, a hearing expense as the cost did not arise as part of preparing for this hearing. A separate claim would have to be submitted. A receipt was provided for the process server fee and it is granted.

Summary of Decision

30. The tenant shall vacate the premises immediately.

31. 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.

32. The landlord is granted an order of possession.

33. The tenant shall pay to the landlord \$465.83 as follows:

| | |
|----------------------------|-----------|
| Unpaid Rent..... | \$975.00 |
| Hearing Expenses..... | \$170.00 |
| Less Security Deposit..... | -\$679.17 |
| Total..... | \$465.83 |

16-August-2024

Date



Seren Cahill
Residential Tenancies Office