

Residential Tenancies Tribunal

Application 2024-0763-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 3-September-2024 at 1:50 pm.
2. The applicants, [REDACTED] and [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 tenant acknowledged they received notice of this hearing more than ten days before the hearing date.
5. The tenant asked to have her counterclaim for damages be heard. She provided a partially completed application for dispute resolution and evidence that she had paid the \$20 application fee. This application was not fully completed and is not properly before me. Further, the landlords were not served with notice of the counterclaim and thus not given an opportunity to prepare a defense. I therefore cannot not consider the issue of damages in this decision. For clarity, it remains open to the respondent to make such a claim in the future, subject to the normal limitations.
6. The landlords submitted some evidence very shortly before the hearing, less than the three days prior which this tribunal requests. The tenant indicated she did not receive a copy of this evidence. I therefore excluded this evidence from the record and did not consider it.

Issues before the Tribunal

7. Should the landlord's claim for unpaid rent and late fees succeed?
8. Should the landlord's claim for an order of vacant possession 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 sections 19(1), 19(4), and 34 of the *Act*, as reproduced here:

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 and Late Fees

Landlord's Position

12. The landlords submit that the tenant has not paid the monthly rent of \$1050 for the rental term of August 17 to September 16 and accordingly claim for that amount. They also seek \$65 in late fees.

Tenant's Position

13. The tenant did not dispute the landlord's claim regarding the rent for that period. She argued that the damages she was owed exceeded the value of the rent due.

Analysis

14. I accept the testimony that the tenant owes rent for the rental period of 17-August-2024 to 16-September-2024. However, this tribunal cannot consider future rent. Therefore, I can only deal with rent to the date of the hearing.
15. A daily rate must be calculated. The correct formula for determining a daily rate is found by multiplying the monthly rate by the 12 months of the year and dividing by the 366 days of this year. In this case the monthly rate was \$1050, so the formula is $\$1050/\text{month} \times (12 \text{ months}/366 \text{ days}) = \sim \$34.43/\text{day}$. Calculated to the date of the hearing yields a total amount of rent owed of \$619.67.
16. The tenant must continue to pay rent at the daily rate of \$34.43/day for each day she remains in the premises past 3-September-2024.
17. The landlords seek late fees in the amount of \$65. Parties agree that rent for the period of 17-July-2024 to 16-August-2024 was not paid until 16-August-2024, 30 days later. I have already accepted that rent for the rental period of 17-August-2024 to 16-September-2024 has not been paid as of the date of the hearing.
18. S. 15 of the *Act* states that where 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. The minister has set the rate for late fees at \$5 for the first day and \$2 for each day after that to a maximum of \$75.
19. As the rent was overdue for more than 30 days, the claim for \$65 in late payment fees is made out.

Issue 2: Vacant Possession

Landlord's Position

20. The landlords submit that they issued a valid termination notice, that the move out date of the termination notice has passed, and that they are therefore entitled to an order of vacant possession.

Tenant's Position

21. The tenant acknowledged receipt of the termination notices.

Analysis

22. To receive an order of vacant possession, a landlord must have submitted a valid termination notice. To be valid, a termination notice must comply with all relevant sections of the *Act*. The landlords submitted two termination notices, LL#1 and LL#2. LL#1 is the second issued and will be assessed first.
23. LL#1 is a termination notice 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 specifies that it was issued under s. 19 of the *Act*. It therefore complies with s. 34 of the *Act*.
24. LL#1 was signed by the landlord. It states the date on which the rental agreement is to terminate and the tenant is to vacate the premises. It was served on the tenant electronically, in accordance with s. 35(2)(f) of the *Act*. It therefore complies with s. 19(4) of the *Act*.
25. LL#1 was issued on 6-August-2024. Parties agree that at this point rent had been overdue for more than five days. It gives a termination date of 18-August-2024, which is not less than ten days after it was served. It therefore complies with s. 19(1) of the *Act*.
26. S. 19(2) of the *Act* states that 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. The landlords testified that the tenant did not pay the fees under s. 15 and the tenant did not dispute this. S. 19(2) therefore does not apply.
27. LL#1 complies with all relevant provisions of the *Act* and is therefore valid under s. 19.
28. As LL#1 is a valid termination notice, is unnecessary to consider the validity of LL#2 and I decline to do so.

Issue 3: Security deposit

29. 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 \$690.00.
30. 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 the relevant years prior to 2024 and a simple cumulative interest rate of 1% annual. Calculated to the date of the hearing, that results in a total interest of \$4.68.

Decision

31. The landlord's claim for \$619.67 in unpaid rent and \$65.00 in late fees.
32. The valid termination notice gave a move out date of 18-August-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.
33. 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 and compensation for a day taken off work. As no timeslip or other documentary evidence of the exact amount claimed regarding the day off work was provided I decline to consider it.
34. The landlords may apply the security deposit and interest, totalling \$694.68, against the sum owed.

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 Sherriff, 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 tenant must continue to pay rent at the daily rate of \$34.43/day for each day she remains in the premises past 3-September-2024.
39. The tenant shall pay to the landlord \$9.99 as follows:

Unpaid Rent.....	\$619.67
Late fees.....	\$65.00
Hearing Expenses.....	\$20.00
Less Security Deposit.....	-\$694.68)
Total.....	\$9.99

16-September-2024

Date


Seren Cahill
Residential Tenancies Office