

Residential Tenancies Tribunal

Application 2025-0733-NL and 2025-0761-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 15-September-2025 at 9:00 am.
2. The applicant, [REDACTED], hereinafter referred to as the tenant, attended via teleconference.
3. The respondent, [REDACTED], hereinafter referred to as the landlord, was represented at the hearing by director [REDACTED], who also attended via teleconference.
4. The landlord called two witnesses, [REDACTED] and [REDACTED], who also attended via teleconference.

Preliminary Matters

5. Both parties confirmed that they were properly served.

Issues before the Tribunal

6. Should the landlord's claim for an order of vacant possession succeed?
7. Should the landlord's claim for damages succeed?
8. How should the rent be distributed?
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 hearing are s.24 and s.34 of the *Act*, which read as follows:

Notice where tenant contravenes peaceful enjoyment and reasonable privacy

24. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes statutory condition 7(a) set out in subsection 10(1), the landlord may give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises on a specified date not less than 5 days after the notice has been served.

(2) 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: Vacant Possession

- 12. To receive an order for vacant possession, a landlord must have provided a valid termination notice. To be valid, a termination notice must comply with all relevant sections of the Act. In the present case, the landlord provided a notice labelled LL#1.
- 13. 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 that it was given under s. 24 of the Act. It therefore complies with s. 34.
- 14. LL#1 was signed by a representative of the landlord. It states the date on which the rental agreement is to be terminated. It was served on the tenant by placing it in the tenant's mailbox in accordance with s. 35(2)(d) of the Act. It therefore complies with s. 24(2).
- 15. LL#1 was served on the tenant 11-August-2025, which is not less than 5 days before the termination date provided, 18-August-2025. It therefore complies with the timeline requirements under s. 24(1).
- 16. The only remaining consideration is whether the tenant contravened statutory condition 7(a) set out in s. 10(1) of the Act, which reads as follows:

7. Peaceful Enjoyment and Reasonable Privacy

(a) The tenant shall not unreasonably interfere with the rights and reasonable privacy of a landlord or other tenants in the residential premises, a common area or the property of which they form a part

17. The landlord submitted that the tenant has been unreasonably interfering with the rights of other tenants and residents by smoking in the premises during the period from late July 2025 onward, which is prohibited by the rental agreement. Smoking in violation of the rental agreement does not by itself necessarily constitute unreasonable interference. However, the witnesses who were called testified that the smoking interfered with their ability to enjoy the premises.
18. The first witness testified that they observed the smell of cigarette smoke in the floor above the tenant's apartment as well as the communal laundry room below the tenant's apartment. They also testified that they smelled the smoke coming from the tenant's open window by the main walkway on the first floor. The second witness testified that her apartment is directly above the tenant's and the smell of cigarette smoking was so overpowering that she was forced to wear a face mask to bed, and it was disruptive to her sleep.
19. The tenant denies smoking on the premises. He suggested that the other tenants may have been smelling smoke from the ongoing wildfires. I find this unlikely. Cigarette smoke has a very distinctive smell easily discernable from wildfire smoke. It also is localized in a way that smoke blowing in from a wildfire would not be.
20. Considering the totality of the testimony before me, I find on a balance of probabilities that the tenant interfered with the rights of other tenants by smoking, and that this interference was unreasonable. LL#1 complies with all relevant sections of the *Act* and is therefore valid.

Issue 2: Damages

21. The landlord claims \$7200.00 in compensation for damages, divided amongst five items. In accordance with the Residential Tenancies Program Policy and Procedure Guide, Policy 9-003, when a landlord makes a claim for damages, they must provide sufficient evidence to establish the extent and nature of any damages, that the damage was caused by a wilful or negligent act of a tenant or a person they allowed on the premises, and the cost of repair or replacement. This should include documentary evidence wherever reasonably possible.
22. The tenant has not vacated the premises and the landlord has not yet had an opportunity to assess the damages (if any). They assert that if the tenant is smoking in the premises, there must be damage to the walls and furniture. I acknowledge that cigarette smoke is damaging and smoking in an enclosed area is extremely likely to cause damage. Nevertheless, the landlord must be able to provide direct evidence of the damages and the cost of repair. This has not yet been done because it cannot yet be done.
23. The landlord's claim for damages is premature and is dismissed without prejudice.

Issue 3: Rent

24. The tenant has paid rent up to the end of the fixed term on 31-May-2026. Parties agree that some amount of rent must be refunded. To calculate the exact amount, a daily rate must be used.
25. The correct formula for a daily rate is multiplying the monthly rent by the 12 months and dividing by the 365 days of the year. In this case, the daily rate is $\$2100/\text{month} \times (12 \text{ months}/365 \text{ days}) \approx \$69.04/\text{day}$. The tenant has occupied the premises for 3 months and 15 days of September at the time of the hearing. $(\approx \$69.04/\text{day} \times 15 \text{ days}) + (\$2100/\text{month} \times 3 \text{ months}) = \7335.62 for time occupying the premises so far. $\$25200$ in rent has been paid, so the amount owing to the tenant is currently $\$25200 - \$7335.62 = \$17864.38$.
26. The tenant is owed $\$17864.38$ minus $\$69.04$ for each day they remain in the premises after the hearing date.

Issue 4: Security Deposit

27. Similarly to issue 2, above, the tenancy had not ended when the tenant's application for the return of a security deposit was received. A tenant cannot seek the return of a security deposit before the tenancy has ended.
28. No order is made regarding the security deposit.

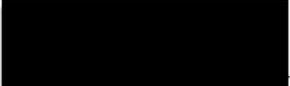
Decision

29. A valid termination notice was issued which gives a move out date of 18-August-2025. The rental agreement terminated on that date. Insofar as the tenant is still residing at the premises, he is doing so illegally.
30. The landlord's application for an order of vacant possession succeeds.
31. The landlord's claim for damages is dismissed without prejudice.
32. The landlord shall pay to the tenant $\$17864.38$ in rent minus $\$69.04$ for each day they remain in the premises after the hearing date.
33. No order is made regarding the security deposit.

Summary of Decision

34. The tenants shall vacate the premises immediately.
35. The tenants 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.
36. The landlord is granted an order of possession.
37. The landlord shall pay to the tenant $\$17864.38$ in rent minus $\$69.04$ for each day they remain in the premises after the hearing date.

18-September-2025
Date


Seren Cahill
Residential Tenancies Office