

Residential Tenancies Tribunal

Application 2024-0684-NL & 2024-0796-NL

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:49 p.m. on 9-October-2024.
2. The applicant, [REDACTED], represented by [REDACTED], hereinafter referred to as “the tenant”, attended by teleconference.
3. The respondent and counter applicant, [REDACTED] represented by [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.

Preliminary Matters

4. The tenant submitted an affidavit with his application stating that he had served the landlord with the notice of hearing via prepaid registered mail ([REDACTED]) on 20-September-2024 (TT#1). The landlord confirmed receipt of the document and countered the claim. The landlord submitted an affidavit with their application stating that they had served the tenant with the notice of hearing electronically by email to; [REDACTED] on 24-September-2024 (LL#1). The tenant confirmed receipt of the document on that date. In accordance with the *Residential Tenancies Act, 2018* this is good service.
5. There is a written month-to-month rental agreement which commenced on 1-June-2023 with the current landlord. The tenant moved into residential premises approximately 10 years earlier. Rent is currently \$1050.00 per month, due on the 1st day of each month. A security deposit of \$475.00 was originally paid and is in the current landlord’s possession.

Issues before the Tribunal

6. The tenant is seeking:
 - Validity of the termination notice.
 - Hearing expenses \$20.00
7. The landlord is seeking:
 - An order for vacant possession of the rented premises

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*.
9. Also, relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 18: Notice of termination of rental agreement and section 35: Service of documents. Also, relevant and considered in this decision is the following section of the *Residential Tenancies Policy Manual*: Section 12-1: Costs.

Issue # 1: Validity of Termination Notice

Vacant Possession of the Rented Premises

Relevant Submissions

10. The landlord submitted a copy of a termination notice issued to the tenant on 16-May 2024 under Section 18: *Notice of termination of rental agreement* to vacate the premises on 31-August-2024 (LL#2). The notice was sent electronically by email to:
[REDACTED]

Landlord's Position

11. The landlord terminated the rental agreement under the authority of the *Residential Tenancies Act, 2018*.

Tenant's Position

12. The tenant disputed that he should have to vacate the premises as he testified that he did not receive a copy of the termination notice until 2 months after it was sent. The tenant stated that the landlord could not give a termination notice by email and stated that they had to give it personally or post it to his door. The tenant's representative stated that the tenant has a computer that is usually broken, and he can't always check his emails.

Analysis

13. The notice was served under Section 18 of the *Residential Tenancies Act, 2018* which states:

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.*

14. Section 35(2) of the *Residential Tenancies Act, 2018* states:

Service of Documents

35(2). A notice or other document under this Act other than an application under section 42 shall be served by a landlord on a tenant by

- (f) *sending it electronically where ...*
- (ii) *the tenant has provided an electronic address for the receipt of documents, and*
- (iii) *it is sent to that electronic address.*

15. I accept that the tenant would have preferred to have the termination notice hand delivered to him or posted on his door, however in accordance with Section 35(2) as stated above, I find that the landlord properly served the termination notice to the tenant on 16-May-2024 as the landlord could show that they used an email address that had been used previously by the tenant for the purpose of communication (LL#3).

16. I find that the notice submitted by the landlord meets the requirements of not less than 3 months before the end of a rental period where the residential premises is rented month-to-month. I find that the termination notice is a valid notice.

Decision

17. The termination notice dated 16-May-2024 is a valid notice.

18. The landlord's claim for an *order of vacant possession* succeeds.

Issue # 2: Hearing expenses \$20.00

19. The tenant paid an application fee of \$20.00 to *Residential Tenancies* and is seeking reimbursement. Section 12-1 of the *Residential Tenancies Policy* states that in general, claimable costs may include the filing fee. As the tenant's claim was not successful, the landlord is not required to pay the tenant's hearing expenses.

Decision

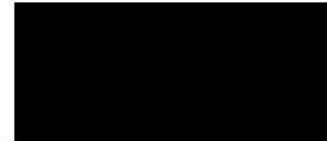
20. The tenant's claim for *hearing expenses* does not succeed.

Summary

21. The termination notice dated 16-May-2024 is a valid notice.
22. The tenant's claim for hearing expenses does not succeed.
23. The tenant shall vacate the premises immediately.
24. 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.
25. The landlord will be awarded an Order of Possession.

October 16, 2024

Date



Pamela Pennell, Adjudicator
Residential Tenancies Office