

Residential Tenancies Tribunal

Application 2024-0730-NL

Michael Reddy
Adjudicator

Introduction

1. Hearing was called at 9:15 AM on 12 September 2024 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing. [REDACTED], hereinafter referred to as "the witness", participated in the hearing.
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 her 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 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 she has been properly served. The landlord submitted an affidavit with her application stating that she had served the tenant with the notice of hearing by registered mail ([REDACTED]) and by electronic mail [REDACTED] on 26 August 2024 (LL#1). In accordance with the *Residential Tenancies Act, 2018* this is good service. 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 her absence.
5. There is a verbal monthly rental agreement which commenced on 1 May 2023 with rent set at \$800.00, heat and light included, due on the 1st of each month. A security deposit was collected on the tenancy, paid in full and still in the possession of the landlord, in the amount of \$300.00.
6. In a proceeding under the *Residential Tenancies Act, 2018*, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicant has to establish that his/her account of events are more likely than not to have happened.

Issues before the Tribunal

7. The landlord is seeking an Order of Vacant Possession of the rental property.

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 relevant and referred to in this decision are Sections 19, 34 and 35 of the *Act*.

Issue 1: Vacant Possession of the Rental Premises

10. The landlord testified the tenant took occupancy of the rental premises on 1 May 2023 and monthly rent was set at \$800.00. She stated on 1 July 2024, the tenant paid \$535.00 and was in rental arrears of \$270.00. On 4 August 2024, the landlord testified the tenant was personally served a Landlords Notice to Terminate Early- Cause under Section 19 of the *Act* (LL # 2) with a request for the tenant to vacate the rental premises by 16 August 2024.
11. The witness testified the tenant was personally served this notice by her husband on 4 August 2024.
12. The landlord was not seeking rental arrears and testified the tenant has not paid rent for August 2024 or September 2024 and to the best of her knowledge and belief, the tenant remains in the rental premises on the date of the hearing (12 September 2024).

Analysis

13. Section 19, Notice where failure to pay rent of the *Residential Tenancies Act, 2018* states:

19. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),

....

(b) where the residential premises is

- rented from month to month,*
- rented for a fixed term, or*
- 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.

14. Rent is required to be paid by the tenant for the use or occupancy of a residential premises. The tenant had been in rental arrears in excess of 5 days when the notice was personally served on 4 August 2024 to be out of the rental premises by 16 August 2024. On the date of termination, 16 August 2024, the tenant was still in arrears. In accordance with Section 19 of the *Residential Tenancies Act, 2018* as stated above, the termination notice meets the requirements of the Act and is a valid notice.

15. The tenant should have vacated the property by 16 August 2024.

Decision

16. The landlord's claim for vacant possession succeeds.

Summary of Decision

17. The landlord is entitled to the following:

- An Order of Vacant Possession of the rented premises.
- The tenant shall also 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 Order of Possession.

07 October 2024
Date



Michael J. Reddy
Residential Tenancies Office