

## **Residential Tenancies Tribunal**

Application 2024-0865-NL

Pamela Pennell  
Adjudicator

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### **Introduction**

1. Hearing was called at 1:56 p.m. on 10-October-2024.
2. The applicant, [REDACTED] represented by [REDACTED] and [REDACTED], hereinafter referred to as “the landlord”, attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant” was called into the hearing and attended by teleconference.
4. The respondent, [REDACTED] has been removed from the application as he vacated the unit in June 2023.

### **Preliminary Matters**

5. The landlord submitted an affidavit with their application stating that they had served the tenant with the notice of hearing via prepaid registered mail ([REDACTED]) on 12-September-2024 (LL#1). The tenant testified that she did not receive the document and was unaware of the hearing. *Canada Post* tracking shows that a notice card was left on 16-September at 2:03pm and a final notice was left on 23-September at 11:57am. In accordance with Section 35 of the *Residential Tenancies Act, 2018*: Service of documents, pre-paid registered mail is one of the approved methods of service and the document is considered to have been served on the fifth day after mailing. This is good service.
6. There is a written month-to-month rental agreement which commenced on 27-April-2019. Rent is currently \$1010.00 per month, due on the 1st day of each month. A security deposit of \$400.00 was paid in April 2019.

## Issues before the Tribunal

7. The landlord is seeking:
  - An order for vacant possession of the rented premises
  - Hearing expenses \$52.04

## 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: Vacant Possession of the Rented Premises

#### Relevant Submissions

10. The landlord submitted a copy of a termination notice issued to the tenant on 26-February 2024 under Section 18: *Notice of termination of rental agreement* to vacate the premises on 31-May-2024 (LL#2). The notice was posted on the tenant's door.

#### 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 did not dispute that the termination notice was a valid notice, however the tenant disputed that the hearing should proceed as she claimed that she did not receive the documents and was unaware of the hearing.

## 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 ....

(e) sending it to the tenant by pre-paid registered mail or prepaid express post at an address ...

(i) provided by the tenant, or

(ii) where the tenant carries on business.

15. I accept that the tenant was not aware of the hearing as she did not retrieve the mail and was ultimately called into the hearing, however the landlord was able to show that they served the tenant properly as per paragraph 5 above and a tenant(s) cannot evade service. In accordance with section 35 as stated above, the landlord sent the document via prepaid registered mail to the residential premises, and it was considered served 5 days after it was sent.

16. I asked the landlord if something had happened between the end of May and October as it appears to be a long time to enforce the termination notice and she responded that the tenant was having trouble finding a new place to reside and they granted her 3 extensions, 1 until the end of June, a second extension until the end of July and a third extension to the end of August.

17. 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. The landlord testified that the termination notice was posted to the tenant's door and the tenant confirmed receiving the notice. I find that the termination notice is a valid notice and I find that the extensions do not invalidate the termination notice.

## Decision

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

### Issue # 2: Hearing expenses \$52.04

19. The landlord paid an application fee of \$20.00 to *Residential Tenancies* and also incurred *Canada Post* charges in the amount of \$32.04. The landlord submitted a copy of the receipts (LL#3). Section 12-1 of the *Residential Tenancies Policy* states that in general, claimable costs may include the filing fee and registered mail. As the landlord's claim has been successful, the tenant shall pay the filing fee and 50% of the *Canada Post* charges.

## Decision

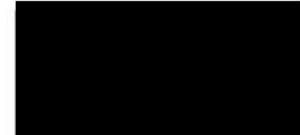
20. The landlord's claim for *hearing expenses* succeeds in the amount of \$36.02.

## Summary

21. The landlord shall retain \$36.02 from the security deposit for hearing expenses.
22. The tenant shall vacate the premises immediately.
23. 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.
24. The landlord will be awarded an Order of Possession.

October 16, 2024

Date



Pamela Pennell, Adjudicator  
Residential Tenancies Office