

Residential Tenancies Tribunal

Application 2024-0880-NL

Michael Reddy
Adjudicator

Introduction

1. Hearing was held at 9:19 AM on 3 December 2024 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", attended. [REDACTED] [REDACTED], did not attend.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as "the tenants", did not attend.

Preliminary Matters

4. The tenants were not present or represented at the hearing and I was unable to establish contact as no telephone contact information was available to me. 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 the hearing 10 clear days prior to the hearing date and, where the respondent fails to attend the hearing, Rule 29.11(1) states the hearing may proceed in the respondent's absence so long as they have been properly served. The landlord submitted an affidavit (L#1) with the application stating the tenants had been served electronically, the notice of the hearing on 30 September 2024 at approximately 1:00 PM. The tenants were also served a Notice of Rescheduled Hearing (L#2) on 5 November 2024 via registered mail ([REDACTED]). In accordance with the *Residential Tenancies Act, 2018*, this is considered good service. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.
5. The month-to-month rental agreement commenced in October 2019 with rent of \$650.00 per month, paid on the 1st of each month (L#3). There was a security deposit of \$320.00 collected on the tenancy three or four months prior to the date of hearing when income support began paying the tenants rent.

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 landlords are 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 18, 34 and 35 of the *Act*.

Issue 1: Vacant Possession of the Rental Premises

10. The landlord testified that on 26 August 2024 the tenants were personally served a Notice of Termination of the rental agreement under Section 18 of the *Act* with a request for the tenants to vacate the rental premises on 30 November 2024 (L#4). Additionally, the landlord stated that on 12 September 2024, the tenants were electronically served a termination notice under Section 19 of the *Act*, with a request to vacate by 23 September 2024. However, during the hearing the landlord testified that the rental arrears have been cleared up.. The landlord clarified that he was seeking an Order of Vacant Possession in relation to the Section 18 Notice only.
11. The landlord testified that he had a “messenger conversation” with the tenant, who advised that she and her son had vacated the premises, and that they had most of their possessions out of the unit. Following this conversation, the landlord and his father attended the premises to lock the doors and discovered a cat left at the premises and a few of the tenant’s personal belongings. The landlord advised that he contacted the SPCA regarding the animal.

Analysis

12. 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

.....
(b) not less than 3 months before the end of a rental period where the residential premises is rented from month to month; and

13. On examination of the termination notice submitted into evidence (L#4), I find that the notice served on 26 August 2024 had a terminated date of 30 November 2024. As the date of termination identified on the notice is not less than 3 months before the end of the rental period and the date the tenant is required to move out, the termination notice follows the requirements of Section 18 (2)(b).
14. Section 18 (9) and 34 identify the technical requirements of the termination notice.

15. **Section 18 (9)**

In addition to the requirements under Section 34, a notice under this section shall

- (a) *be signed by the landlord;*
- (b) *be given not later than the first day of the rental period;*
- (c) *state the date on which the rental agreement terminates and the tenant is required to vacate the residential premises; and*
- (d) *be served in accordance with section 35.*

Section 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.*

16. On examination of the termination notice, I find all these criteria have been met. Further, as identified above, the landlord testified that the termination notice was served personally which is a permitted method of service identified under Section 35.
17. According to the reasons identified above, I find that the termination notice issued by landlords to be proper and valid. The tenants should have vacated the property on 30 November 2024; and, according to the landlord they did vacate as required. Nonetheless, as the landlord filed an application and proceeded with the hearing, a decision will be rendered.

Decision

18. The landlords claim for vacant possession succeeds.
19. Should it be required, the landlords are awarded the cost associated with the certification and enforcement of the Possession Order by the High Sheriff of NL.

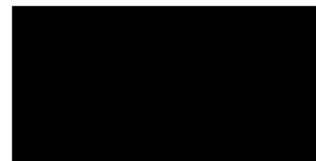
Summary of Decision

20. The landlords are entitled to the following:

- An Order for Vacant Possession of the rented premises
- The tenants shall also pay to the landlord any costs charged to the landlords by the Office of the High Sheriff should the landlords be required to have the Sheriff enforce the attached Order of Possession.

20 December 2024

Date



Michael Reddy, Adjudicator
Residential Tenancies Office