

Residential Tenancies Tribunal

Application 2024-1097-NL

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:58 p.m. on 6-December-2024.
2. The applicant, [REDACTED], represented by [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
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 the 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 their application stating that they had served the tenant with the notice of hearing electronically to; [REDACTED] on 3-December-2024 (LL#1). The landlord’s representative noted that a clerical error was made on the affidavit and the correct email address used for service was; [REDACTED] The landlord submitted proof of sent email and proof of email address used (LL#2). 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 written month-to-month rental agreement which commenced on 25-November-2021. Rent is \$550.00 per month due on the first day of each month. A security deposit of \$300.00 was paid on 22-October-2021 and is in the landlord’s possession.

Issues before the Tribunal

6. The landlord is seeking:
 - An Order for Vacant Possession of the rented premises.
 - Hearing expenses \$20.00

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
8. Also, relevant and considered in this decision is the following section of the *Residential Tenancies Act, 2018*: Section 20: Notice where material term of an agreement contravened. Also, relevant and considered is Section 12-1 of the *Residential Tenancies Policy Manual: Recovery of Fees*.

Issue # 1: Vacant Possession of the Rented Premises

Relevant Submissions:

9. The landlord submitted a copy of a termination notice given under Section 20: Notice where material term of agreement contravened. The notice is signed and dated for 29-August-2024, with a termination date of 30-September-2024 (LL#3).

Landlord's Position:

10. The landlord's representative testified that the tenant contravened Section 10(c) of the rental agreement by failing to provide updated statements of gross family income. The landlord submitted a copy of the rental agreement to support the claim (LL#4). The landlord's representative testified that a written notice of the contravention was sent to the tenant on 28-May-2024 requesting the necessary information for the rental renewal and she stated that a second letter was forwarded to the tenant on 14-August-2024. The landlord submitted a copy of the letter to support the claim (LL#5). The landlord is seeking vacant possession as the tenant failed to remedy the contravention within a reasonable time.

Analysis

11. Section 20 of the *Residential Tenancies Act, 2018* states:

Notice where material term of agreement contravened

20. (2) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes a material term of a rental agreement, the landlord may give the tenant written notice of the contravention, and if the tenant fails to remedy the contravention within a reasonable time after the notice has been served, the landlord may give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises.

(3) Where the landlord gives a tenant notice under subsection (2) that a rental agreement is terminated, the notice shall be given

(b) not less than one month before the end of a rental period where the residential premises is

i. rented from month to month,

ii. *rented for a fixed term, or*

iii. *a site for a mobile home*

(4) *In addition to the requirements under section 34, a notice under this section shall*

(a) be signed by the person giving 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 date by which the tenant is required to vacate the residential premises; and

(d) be served in accordance with section 35.

12. I accept the landlord's testimony and the exhibits entered into evidence which show that the tenant had an obligation to submit the necessary financial statements to the landlord for rental renewal. I accept that the landlord made 2 attempts to retrieve the information before issuing the termination notice on 29-August-2024.

13. In accordance with Section 20 of the *Act* as stated above, where a tenant contravenes a material term of a rental agreement, the landlord may give the tenant written notice of the contravention, which the landlord could show that they did on 14-August, and if the tenant fails to remedy the contravention within a reasonable time, the landlord may give notice to terminate the tenancy. The landlord gave the termination notice 15 days later, on 29-August. I asked the landlord how the termination notice was given, and she responded that it was posted to the tenant's door on 29-August.

14. I find that the termination notice was given not less than 1 month before the end of a rented period where the residential premises is rented from month to month, and as such I find that the termination notice is a valid notice.

Decision

15. The landlord's claim for an order for *vacant possession* of the rented premises succeeds.

Issue # 2: Hearing Expenses \$20.00

16. The landlord paid an application fee of \$20.00 to *Residential Tenancies* and provided a copy of the receipt (LL#6). The landlord is seeking hearing expenses to be paid in full. As the landlord's claim has been successful, the tenant shall pay the hearing expenses.

Decision

17. The landlord's claim for *hearing expenses* succeeds in the amount of \$20.00.

Summary of Decision

18. The landlord shall retain \$20.00 from the security deposit to cover hearing expenses.
19. The tenant shall vacate the property immediately.
20. 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.
21. The landlord will be awarded an Order of Possession.

January 7, 2025

Date



Pamela Pennell, Adjudicator
Residential Tenancies Office