

Residential Tenancies Tribunal

Application 2025-0259-NL

Oksana Tkachuk
Adjudicator

Introduction

1. Hearing was called at 1:45 p.m. on 24-April-2025.
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” attended via teleconference.

Preliminary Matters

4. The landlord submitted an affidavit with their application stating that they have served the tenant with the notice of the hearing electronically via email on 11-April-2025 (LL#1). The tenant acknowledged receiving the notice of the hearing on that date. In accordance with the *Residential Tenancies Act, 2018* this is good service, I proceeded with the hearing.
5. There is a written month-to-month rental agreement that commenced on 1-June-2023. Rent is \$800.00 per month and as per a verbal agreement between the parties, the rent is due on the 7th of each month. A security deposit of \$400.00 was collected on 31-May-2023 and is still in landlord’s possession.

Issues before the Tribunal

6. The landlord is seeking:
 - An Order for Vacant Possession of the rented premises.

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 are the following sections of the *Residential Tenancies Act, 2018*: Section 19: Notice where failure to pay rent and the following section of the *Residential Tenancies Policy*: Section 7-1: Notice of Termination.

Issue # 1: Vacant Possession of the Rented Premises

Relevant Submissions:

9. The landlord submitted three copies of the termination notices under Section 19: Notice where failure to pay rent, signed and dated as follows:
- 7-January-2025 with a termination date of 17-January-2025(LL#2);
 - 7-March-2025 with a termination date of 18-March-2025(LL#3);
 - 10-December-2024 with a termination date of 20-December-2024 (LL#4).

Landlord's Position:

10. The landlord's representative testified that rent has been late in March, January and December. The landlord's representative testified that all three termination notices were served electronically via the email address provided by the tenant in the rental agreement on the date they were issued. The landlord is seeking vacant possession of residential premises.

Tenant's Position:

11. The tenant did not dispute receiving the most recent termination notice, issued on 7-March. He acknowledged that rent was due on the 7th of each month, in accordance with the agreement, and confirmed that he paid March rent on 7-March. He also acknowledged that rent for January was paid on 8-January, and December rent on 12-December. However, the tenant stated that, despite reviewing all of his emails twice, he never found the termination notices issued in December and January and does not believe they were ever served to him.

Analysis

12. Section 19 of the *Residential Tenancies Act, 2018* states:

Notice where failure to pay rent

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

(b) 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, 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.

(2) Notwithstanding subsection (1), where the tenant pays the full amount of the overdue rent, including a fee under section 15, before the date specified in the notice under paragraph (1)(a) or (b), the rental agreement is not terminated and the tenant is not required to vacate the residential premises.

(3) Subsection (2) does not apply where notice is given to a tenant under paragraph (1)(a) or (b) more than twice in a 12 month period.

(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.*

13. I accept the landlord's representative's testimony that all termination notices were served electronically via same email address on the date they were issued. Section 19(3) states that the *rental agreement can be terminated after issuing more than two notices for non-payment of rent, even if rent was paid before the termination date*. However, each notice must still comply with legislative requirements.

14. Upon reviewing the latest termination notice issued on 7-March, I find it was issued on the rent due date as per verbal agreement between the parties. I find that the landlord did not comply with the legislative requirements outlined in the Section 19(1)(b) of the *Act*, which states that rent must be overdue for *five days or more* before a landlord may issue a termination notice, and therefore this termination notice cannot be valid.

15. Section 7-1 of the Policy states; *If a termination notice is already in place and a second notice is issued by the same person whereby the termination date is later than that specified in the first notice, then the person issuing the second notice has thereby indicated that they are intending the tenancy to be extended to the date set out in the second notice.*

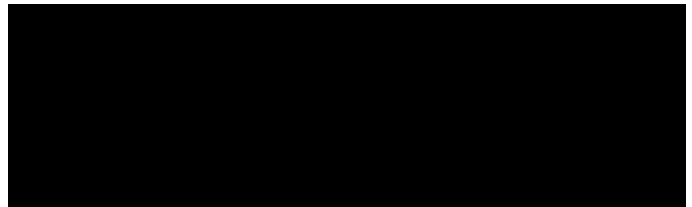
16. For these reasons, as the latest termination notice is determined to be invalid, I find that the landlord's claim for an Order for vacant possession does not succeed.

Decision

17. The landlord's claim for an order for vacant possession of the rented premises does not succeed.

April 29, 2025

Date



Oksana Tkachuk, Adjudicator
Residential Tenancies Office