

Residential Tenancies Tribunal

Application 2025-0266-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 28-April-2025 at 2:00 pm.
2. The applicant, [REDACTED], hereinafter referred to as the landlord, was represented at the hearing by director [REDACTED], [REDACTED], who attended via 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 them 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 they have been properly served. The landlords submitted an affidavit (LL#1) with their application stating that they had served the tenants with notice of the hearing electronically on 15-April-2025 at 6:55 pm. Proof of service was also provided (LL#2). As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlords, I proceeded with the hearing in their absence.

Issues before the Tribunal

5. Should the landlord's claim for an order of vacant possession succeed?

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).

7. Also considered and referred to in this decision are sections 19(1), 19(4), and 34 of the Act, as follows:

Notice where failure to pay rent

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

- (a) where the residential premises is rented from week to week and the amount of rent payable by a tenant is overdue for 3 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 3 days after the notice is served on the tenant; and
- (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.

...

(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.

Requirements for notices

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.

Issue 1: Vacant Possession

8. The landlord testifies that the tenant has not paid rent from February 2025 onwards.

9. In order to receive an order for vacant possession, a landlord must have first issued a valid termination notice. To be valid, a termination notice must comply with all relevant sections of the *Act*. The landlord provided a copy of a termination notice (LL#3) they say they provided to the tenant.
10. The termination notice is written in the form prescribed by the minister. It contains the name and address of the recipient. It identifies the residential premises for which it is given. It states that it was issued under s. 19 of the *Act*. It therefore complies with s. 34.
11. The notice was signed by the landlord. It states the date on which the rental agreement was to terminate. The landlord testified that it was served on the tenants personally, in accordance with s. 35(2)(q) of the *Act*. It therefore complies with s. 19(4).
12. The notice is dated and was served on 28-March-2025, at which point the landlord testifies and I accept that rent was overdue by more than 5 days. It provides a move out date of 7-April-2025.
13. S. 19(1)(b) states that the landlord may give the tenant notice of termination "on a specified date not less than 10 days after the notice is served on the tenants." In this context, is 28-March-2025 less than 10 days before 7-April-2025?

"where a number of days not expressed to be "clear days" is prescribed the days shall be counted exclusively of the 1st day and inclusively of the last and where the days are expressed to be "clear days" or where the term "at least" is used both the 1st day and the last shall be excluded;"
14. S. 22(k) of the *Interpretation Act*, RSNL Chapter I-19 reads as follows:

"where a number of days not expressed to be "clear days" is prescribed the days shall be counted exclusively of the 1st day and inclusively of the last and where the days are expressed to be "clear days" or where the term "at least" is used both the 1st day and the last shall be excluded;"
15. The phrases "not less than" has the same meaning as "at least." They indicate a bare minimum which may be exceeded. Mathematically, both refer to a number equal to or greater than a given value, with the notation $A \geq B$ conveying that A is equal to or greater than B , i.e., A is not less than B or A is at least B .
16. Therefore, when calculating dates in terms of the *Act*, where it states that a date must be "not less than" a certain number of days, the first day and the last must be excluded. In other words, there must be ten days between the two dates. There are 9 days between 28-March-2025 and 7-April-2025, counted exclusively.
17. LL#3 was not served within the timeline required by s. 19(1) of the *Act* and is therefore invalid.

Decision

18. The termination notice dated 28-March-2025 is invalid. The landlord's claim for an order of vacant possession fails.

7-May-2025

Date

Seren Cahill
Residential Tenancies Office