

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0598-05

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:09 a.m. on 03-March-22.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.
3. The respondents are [REDACTED]. [REDACTED], hereinafter referred to as “the landlord,” attended by teleconference.

Preliminary Matters

4. The tenant did not submit an affidavit of service to this tribunal. Both the tenant and landlord agreed that the tenant’s brother served the landlord by placing the documents in her hand on 01-February-2022. The landlord did submit her affidavit (LL#01) stating that she served the tenant by email on 18-February-2022; the tenant confirmed this service.

Issues before the Tribunal

5. The tenant is seeking validity of termination notice and the landlord is seeking vacant possession of the rental premises.

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*.
7. 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 Section 35: Service of documents.

Issue 1: Validity of Termination Notice
Vacant Possession of the Rental Premises

Landlord's Position

8. The landlord submitted a copy of the rental agreement (LL#02). She stated that the tenant moved into the premises on 01-April-2021. They have a written monthly agreement. The rental period is from the 1st day to the last day of each month. The tenant pays \$975.00 a month and it is due on the 1st day of every month. The tenant paid a security deposit of \$730.00 on 20-March-2021; the landlord is still in possession of that deposit.
9. The landlord submitted 3 separate termination (LL#04) notices that she had served on the tenant. Each of the notices are on a "landlord's notice to terminate early form – cause" for failure to pay rent.
10. The landlord hadn't provided the board with a rent ledger, she did however, go through the monthly ledger during the hearing and immediately provided this board with the ledger after the hearing. The landlord's rent ledger is as follows:

Date	Action	Amount	total
01-Apr-21	rent due	-975.00	-975.00
01-Apr-21	rent paid	975.00	0
01-May-21	rent due	-975.00	-975.00
15-May-21	rent paid	300.00	-675.00
20-May-21	rent paid	675.00	0
01-Jun-21	rent due	-975.00	-975.00
18-Jun-21	rent paid	375.00	-600.00
??-Jun-21	rent paid	600.00	0
01-Jul-21	rent due	-975.00	-975.00
20-Jul-21	rent paid	975.00	0
01-Aug-21	rent due	-975.00	-975.00
??-Aug-21	rent paid	975.00	0
01-Sep-21	rent due	-975.00	-975.00
18-Sep-21	rent paid	600.00	-375.00
??-Sep-21	rent paid	375.00	0
01-Oct-21	rent due	-975.00	-975.00
20-Oct-21	rent paid	975.00	0
20-Oct-21	rent paid	225.00	225.00
30-Oct-21	rent paid	550.00	775.00
01-Nov-21	rent due	-975.00	-200.00
4-Nov-21	rent paid	200.00	0
01-Dec-21	rent due	-975.00	-975.00
01-Jan-21	rent due	-975.00	-1950.00
01-Feb-21	rent due	-975.00	-2925.00
01-Mar-21	rent due	-975.00	-3900.00

On some dates the landlord was unable to say the exact date of payment; this is represented by a ??

11. The landlord submitted 3 separate termination notices to this board. The first notice (LL#04) was on a on a “landlord’s notice to terminate early form – cause” for failure to pay rent. The termination notice was signed on 08-September-2021 with a termination date of 18-September-2021. The landlord acknowledges that this does not provided the necessary 10 clear days and she accepts this notice as invalid.
12. The 2nd termination notice (LL#04) is also on a “landlord’s notice to terminate early form – cause” for failure to pay rent. This notice is signed on 09-October-2021 with a termination date of 20-October-2021. The landlord said that she believes that she delivered this notice on the 8th or 9th of October and she gave it to the tenant in person.
13. The landlord said that she served the notice in the evening, so she signed the notice and then dated it for the next day, to ensure that the tenant was given her full amount of notice.
14. The landlord points out that according to the rent ledger, rent is coming in, however, it is due in full on the 1st day of the month.
15. The landlord submitted the 3rd notice (LL#04) which is also on a “landlord’s notice to terminate early form – cause” for failure to pay rent. This notice is signed on 08-December-2021 with a termination date of 19-December-2021. The landlord said that she delivered this notice on the 7th or 8th of December and she placed it in the tenant’s mailbox. She again says that, she signed it and then dated it for the next day, because she was dropping it off in the evening. She added that the tenant doesn’t collect mail daily. She also pointed out that the last time she received rent was 04-November-2021 and that no rent has been received since that time.

Tenant’s Position

16. The tenant agrees to the terms of the rental agreement and the rent ledger as provided by the landlord.
17. The tenant confirms that the landlord served her with the 2nd termination notice in paragraph 12 in person on the 8th of October.
18. The tenant also provided a copy of the December termination notice (TT#01). The tenant said that she didn’t take it from her mailbox until 10-December-2021. The tenant questioned if the landlord can serve her notice by just placing the termination notice in her mailbox.

Analysis

19. The second termination notice is signed on 09-October-2021 with a termination date of 20-October-2021. This notice is under Section 19 of the *Residential Tenancies Act, 2018*, and it 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.

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20. The tenant does pay the rent in full on 20-October-2021, however the rent was not paid prior to the date of termination. As the tenant did not pay until the date of termination notice, this is valid notice and it meets the standard of the Act.
21. The tenant also questioned the validity of her service. Section 35, of the *Residential Tenancies Act, 2018*, and it 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

(a) giving it personally to the tenant;

(b) giving it to a person 16 years of age or older who apparently lives with the tenant;

(c) posting it in a conspicuous place on the tenant's residential premises;

(d) placing it in the tenant's mailbox or under a door in the tenant's residential premises;

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

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22. The landlord stated in paragraph 12 and the tenant confirms in paragraph 17 that the second notice was served in person which also meets the standard of the Act.

23. The third termination notice, was dated for 08-December-2021 with a termination date of 19-December-2021. The landlord said that she believes she placed this notice in the tenant's mailbox on 07-December-2021 and because she believed the tenant may not see the notice until the next day, she dated it for the following day. The landlord stated that rent was last paid on 04-November-2021 and that she hasn't received any rent since.
24. The tenant said that this notice was in her mailbox but she didn't see it until 10-December-2021. It is the tenant's prerogative to collect her mail at her own pace, however this is not the responsibility of the landlord. The tenant questions the service of this document; she wondered if you could serve someone a termination notice by just leaving the notice in her mailbox.
25. As shown above in paragraph 21, according to the *Act*, a document can be placed in a mailbox for service.
26. This notice is also served under Section 19 of the *Residential Tenancies Act, 2018*, as shown in paragraph 19. The tenant was overdue with her rent payment as of 02-December-2021 and the notice given on 08-December-2021 is served after the required 5 days late. This notice is also a valid notice.
27. Both of the termination notices are valid; the tenant should have moved on or before 20-October-2021. The tenant shall move immediately.

Decision

28. The tenant shall move immediately. The landlord will be granted an Order of Possession.

Issue 3: Hearing expenses reimbursed \$20.00

29. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#05) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

Summary of Decision

30. The landlord's claim for an order for vacant possession of the rental premises succeeds.
31. The tenant is to vacate the property immediately.
32. 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

33. The landlord shall retain \$20.00 of the security deposit for the cost of filing her application.

March 4, 2022

Date

