

Residential Tenancies Tribunal

Application 2022 No. 106NL

Decision 22-0106-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 11:19 AM on 14 April 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” participated in the teleconference.
3. The applicant’s authorized representative, [REDACTED], participated in the teleconference.
4. The respondent, [REDACTED], hereinafter referred to as “the tenant”, did not participate.
5. In a proceeding under the *Residential Tenancies Act*, 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 this proceeding the standard of proof is referred to as the balance of probabilities which means the applicants have to establish that their account of events is more likely than not to have happened.

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 case are sections 19 and 35 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

9. The tenant was not present or represented at the hearing and there was no telephone number was provided where she could be reached. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*.
10. According to Rule 29.05(2)(a) a respondent 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.
11. The landlord submitted an affidavit with her application stating that the tenant had been personally served with notice of the hearing on 31 March 2022.
12. 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.

Issue 1: Vacant Possession of the Rented Premises

Relevant Submissions

13. The landlord stated that he entered into a month-to-month rental agreement with the tenant on 15 November 2020. Monthly rent was set at \$650.00 and was expected to be paid at the start of each month.
14. The landlord testified that he expected the rental agreement to be long term with the tenant. No written lease was created.
15. The landlord testified that a security deposit of \$325.00 was collected on 15 November 2020.
16. The landlord stated that on 8 February 2022 the tenant was provided with a termination notice with an effective date of 19 February 2022 (T#1). The notice was served personally to the tenant on 8 February 2022.
17. The notice was a standard notice of termination under Section 19 of the *Residential Tenancies Act, 2018*. The landlord testified that he prepared the notice with support of his local MHA office and had the notice reviewed by the Newfoundland and Labrador Landlord Tenant prior to issuance. It was through this process that an error in the "move out date" was identified and then corrected by Wite-Out prior to issuance.

18. The landlord stated that the tenant has not moved out, as required, and he is seeking an order for vacant possession of the rented premises

Analysis

19. 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.

20. A written rent ledger was provided showing receipt of rent payments for the months of January 2021 through to October 2021 (T#2). The landlord testified that no rent payment has been received from tenant since that time.
21. The landlord testified, that on 8 February 2022, the day the termination notice was issued, the tenant was in arrears for four months rent (\$2,600.00), and had been in arrears since the beginning of November 2021.
22. As the notice meets all the requirements set out in this section of the *Act*, and as it was properly served, it is a valid notice.

Decision

23. The landlord's claim for an order for vacant possession of the rented premises succeeds.
24. 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.

Summary of Decision

25. The landlord is entitled to the following:
 - An order for vacant possession of the rented premises,
 - The tenant shall also 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.

18 April 2022

Date



Jaclyn Casler
Residential Tenancies Tribunal