

Residential Tenancies Tribunal

Applications: 2022 No. 0149 NL

Decision 22-0149-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:15AM on 1 June 2022 via teleconference.
2. The applicant, [REDACTED], as represented by [REDACTED], hereinafter referred to as "the landlord", participated in the hearing.
3. The respondent, [REDACTED], hereinafter referred to as "the tenant", did not participate in the hearing.
4. An affidavit of service was provided by the landlord (L#1) confirming that the tenant was served by registered mail of the claim against him. A copy of the tracking history was also provided showing that the package was not picked up (L#2). Subsection 42(6) of the *Residential Tenancies Act* considers items served by registered mail, to be served 5 days after the registered mail is sent.
5. The details of the claim were presented as a fixed term rental agreement, running from 1 June 2021 to 30 May 2022, with rent set at \$835.00 per month. A security deposit in the amount of \$549.00 was collected.
6. 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. The standard of proof, in these proceedings, 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

7. The landlord is seeking the following:
 - An order for vacant possession.

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).
9. Also relevant and considered in this case is section 18 of the *Act* and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

10. The tenant was not present or represented at the hearing and I was unable to reach him by telephone as he is said to be incarcerated. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*.
11. 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 he has been properly served.
12. As the tenant was properly served, and any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in his absence.

Issue 1: Vacant Possession

Relevant Submissions

13. The landlord stated that he understands the tenant to be currently incarcerated.
14. The landlord provided a copy of the termination notice issued on 23 February 2022 (L#3). The notice was issued under "section 18(2)(b)" of the *Act* and identified a stated move out date of 31 May 2022. The notice was served personally to the door of the rental unit on the day it was issued.
15. The landlord is seeking an order for vacant possession of the rented premises

Analysis

16. Section 18 of the *Act* allows a landlord to terminate a rental agreement on three (3) months notice without having to provide reasons to either the tenant or to this Tribunal.
17. The validity of such a notice is determined by its compliance with any number of provisions of the *Act*. If and where a notice is found to not comply with any particular provision, the notice is deemed not valid.

18. Specific to a termination notice issued by a landlord under section 18 of the Act, it is required to comply with each of the following to be deemed valid:
 - Rental agreement specific timelines for issuing a notice (18(2) of the Act);
 - Specific details on notices issued (18(9) of the Act);
 - Specific details on notices issued (34 of the Act); and
 - Requirements for service of the notice (35 of the Act).
19. Regarding the Section 18 Termination Notice issued to the tenant on 23 February 2022, I note that the landlord cited "Section 18(2)(b) of the Residential Tenancies Act" as their authority for termination. This clause of the Act states (emphasis added):

(2) *A landlord shall give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises*

(b) *not less than 3 months before the end of a rental period where the residential premises is rented from month to month;*
20. Given however, that the tenant had been renting from a fixed term that was set to expire 31 May 2022, a valid section 18 Termination notice issued under the Act would have needed to cite 18(2)(c) which reads as follows (emphasis added):

(2) *A landlord shall give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises*

(c) *not less than 3 months before the end of the term where the residential premises is rented for a fixed term.*
21. Consequently, the section 18 Termination notice issued to the tenant on 23 February 2022 fails the first test of validity put before it for non-compliance with rental agreement timelines for notice issued to tenants, renting on fixed terms, as required under clause 18(2)(c) of the Act.
22. Furthermore, I note that the Termination notice template utilized by the landlord does not provide specific information regarding the landlord, such as their name (as is included in the termination notice templates available online from the Landlord Tenant office). Without this sort of information included on a termination notice, a tenant could be rightfully confused and doubtful of the authenticity of such a notice received.

Decision

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

2 June 2022

Date

Jaclyn Casler
Residential Tenancies Tribunal