

Residential Tenancies Tribunal

Application 2022-No.230 -NL

Decision 22-230-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:15 a.m. on 03-May-2022.
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” did not attend.

Preliminary Matters

4. The tenant was not present or represented at the hearing and I was unable to reach him 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 he has been properly served. The landlord submitted an affidavit (LL#01) with their application stating that they had served the tenant with notice of the hearing, by prepaid registered mail on 06-April-2022, they provided a tracking number that shows the package was mailed on 06-April-2022, the tenant did not pick up the package; it is our policy to consider the package mailed 5 days after it has been sent, this is therefore good service. The landlord also said that they posted the package to his door. 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 his absence.

Issues before the Tribunal

5. The landlord is seeking:
 - Vacant possession of rental premises
 - Hearing Expenses \$20.00

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, as well as, Residential Tenancies Division Policy 12.

Issue 1: Vacant Possession of Rental Premises

Relevant Submissions

8. The landlord submitted a rental agreement (LL#02) with the application. They entered a written monthly agreement with the tenant beginning 28-February-2014. The tenant currently pays \$605.00 a month. The rental period is from the 1st day of the month until the last day; rent is due in full the 1st day of each month. The landlord said that the tenant paid a security deposit of \$300.00 on 21-February-2014 and they are still in possession of the deposit.
9. The landlord stated that they had a previous hearing with this tenant and an Order was issued (21-0527-01). The order determined rent owed to the end of February 2022. The landlord submitted a rent ledger (LL#03) for the purpose of this decision, beginning 01-March-2022, see below:

Rent ledger
2022-No.230-NL

Date	Action	Amount	total
1-Mar-22	Rent due	605.00	605.00
1-Mar-22	Rent paid	-300.00	305.00
18-Mar-22	Rent paid	-300.00	5.00
30-Mar-22	rent paid	-300.00	-295.00
1-Apr-22	rent due	605.00	310.00
4-Apr-22	rent paid	-300.00	10.00
21-Apr-22	rent paid	-300.00	-290.00
1-May-22	Rent due	-605.00	-895.00

10. The landlord submitted a termination notice (LL#04). It is on a "landlord's notice to terminate early – cause" form for failure to pay rent. The notice is signed and dated for 07-March-2022 with a termination date of 22-March-2022
11. The landlord said that she posted the notice on the tenant's door on 07-March-2022.

12. The landlord points out that according to the ledger the tenant paid \$300.00 of his rent on 01-March-2022 and he then again pays another \$300.00 on 18-March-2022. On the day of termination 22-March-2022 the tenant is in arrears \$5.00.
13. The landlord is seeking an order of vacant possession.

Analysis

14. The notice was served under Section 19, of the *Residential Tenancies Act, 2018*, which 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.

.....

(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.

.....

15. Rent is due in full on the 1st day of the rental period, as per paragraph 8. Although the tenant has made payments towards his rent, on the date of termination, the tenant was still in arrears. The termination notice meets the requirements of the Act and is a valid notice. The notice was served in accordance of the Act.
16. The tenant should have vacated the property by 22-March-2022.

Decision

17. The landlord's claim for an order for vacant possession succeeds.
18. The tenant shall vacate the premises immediately.
19. The tenant shall pay to the landlords 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.

Issue 5: Hearing expenses reimbursed \$20.00

20. 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. The tenant shall pay the landlord \$20.00.

Summary of Decision

21. The tenant shall:
 - Vacate the premises immediately.
 - Pay to the landlords \$20.00 for reimbursement of the hearing expense for the cost of the application fee.
 - Pay to the landlords 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.

The landlord:

- Is granted an Order of Possession

May 9, 2022

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office