

Residential Tenancies Tribunal

Applications: 2022 No. 0270 NL

Decision 22-0270-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:16AM on 19 May 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”, joined the call at 9:33am and participated 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 picked up (L#2).
5. The details of the claim were presented as a longstanding fixed term rental agreement with rent set at \$805.00 per month. A security deposit in the amount of \$275.00 was collected on 29 April 2008. A copy of the original written lease agreement was provided.
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 proceedings initially started in absence of the tenant. 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. The tenant then joined the call along with his sister who was providing support to the tenant.

Issue 1: Vacant Possession

Landlord's Position

13. The landlord provided a copy of the termination notice that was sent on 23 December 2021 with an effective date of 31 March 2022 (L#4). The notice was issued under section 18 of the *Act* and provided for more than the required notice period of not less than 3 months.
14. The notice was served by the building property manager who put the notice under the door of the rental unit. The notice was signed by the Regional Manager for the landlord.
15. The landlord stated that the tenant has not moved out, as required.
16. The landlord is seeking an order for vacant possession of the rented premises

Tenant's Position

17. The tenant stated that he lived in the rental unit and that he was residing in the rental unit in December 2021 when the termination notice was issued. He stated that he received the notice in March and asked that the notice be forgotten about.

Analysis

18. Section 18 of the *Act* states:

Notice of termination of rental agreement

18.

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

(a) not less than 4 weeks before the end of a rental period where the residential premises is rented from week to week;

(b) not less than 3 months before the end of a rental period where the residential premises is rented from month to month; and

(c) not less than 3 months before the end of the term where the residential premises is rented for a fixed term.

(9) In addition to the requirements under section 34, a notice under this section shall

(a) be signed by the person providing the notice;

(b) be given not later than the first day of a rental period;

(c) state the date, which shall be the last day of a rental period, on which the rental agreement terminates and the tenant intends to vacate the residential premises or the date by which the tenant is required to vacate the residential premises; and

(d) be served in accordance with section 35.

19. 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.
20. 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

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

22. 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.

Issue 3: Hearing Expenses


1. The landlord claimed **\$20.00** for the expense of applying for the hearing (L#5).
2. The landlord also claimed the costs of providing notice to the tenant of the dispute via registered mail. This receipt for **\$14.88** is provided
3. As her claim has been successful, the tenant shall pay the hearing expense of **\$34.88** ($\$20.00 + \$14.88 = \34.88).

Summary of Decision

4. The landlord is entitled to the following:
 - A payment of \$34.88 for hearing expenses;
 - 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.

24 May 2022

Date


Jaclyn Casler
Residential Tenancies Tribunal