

Residential Tenancies Tribunal

Application 2022 No. 433NL

Decision 22-0433-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:05 AM on 29 June 2022 via teleconference.
2. The applicants, [REDACTED], were represented at the hearing by [REDACTED], of [REDACTED], hereinafter referred to as "the landlord". The respondent, [REDACTED], hereinafter referred to as "the tenant", was also in attendance.

Issues before the Tribunal

3. The landlord is seeking an order for vacant possession of the rented premises.

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this case are sections 19 and 35 of the *Residential Tenancies Act, 2018*.

Issue 1: Vacant Possession of Rented Premises

Relevant Submissions

The Landlord's Position

6. The landlord stated that he had entered into an 11-month, fixed-term rental agreement with the tenant on 01 October 2021, and a copy of the executed lease was submitted with his application. The agreed rent was set at \$1700.00 per

month and it is acknowledged in the lease that the tenant had paid a security deposit of \$1275.00.

7. With his application, the landlord submitted a copy of a termination notices that he stated was delivered to the tenant, by e-mail, on 10 May 2022. A copy of that e-mail was also submitted at the hearing. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 21 May 2022.
8. The landlord stated that this notice was issued to the tenant because he had not paid his rent, on 01 May 2022, as required. Since the notice was issued, the landlord testified that he had only received 2 other rent payments: \$250.00 was paid on 24 May 2022, and \$100.00 was paid on 07 June 2022.
9. 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.

The Tenant's Position

10. The tenant did not dispute the landlord's account of the rent payments he had made, though he did claim that he had made an additional rent payment on 06 July 2022, the day before the hearing.
11. With respect to the termination notice, the tenant stated that although the notice was dated 10 May 2022, he did not receive it on that date, but he was not able to be any more specific.

Analysis

12. 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),

- (a) *where the residential premises is rented from week to week and the amount of rent payable by a tenant is overdue for 3 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 3 days after the notice is served on the tenant; and*
- (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.

(3) Subsection (2) does not apply where notice is given to a tenant under paragraph (1)(a) or (b) more than twice in a 12 month period.

(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.

13. There is no dispute that the tenant had not paid his rent for May 2022 on time, and on 21 May 2022, the termination date set out in the notice, the tenant remained in arrears in the amount of \$1700.00.
14. Had the termination notice been issued on 10 May 2022, as it is dated, it would be a valid, 10-day notice. But section 35 of the Act states:

Service of documents

35. (1) A notice or other document under this Act other than an application under section 42 shall be served by a tenant on a landlord by

...

(f) sending it electronically where

(i) it is provided in the same or substantially the same form as the written notice or document,

(ii) the landlord has provided an electronic address to receive documents, and

(iii) it is sent to that electronic address; or

...

(6) For the purpose of this section, where a notice or document is sent electronically, it shall be considered to have been served on the day it is sent, if the document is sent by 4 p.m., or the next day that is not a Saturday or holiday, if the document is sent after 4 p.m.

15. The e-mail submitted at the hearing by the landlord, in which the landlord had issued the termination notice, shows that it was sent to the tenant at 5:03 PM on Tuesday, 10 May 2022. As that e-mail was sent after 4:00 PM, it is considered to have been served on Wednesday, 11 May 2022. But on 11 May 2022, the earliest date the landlord could have required the tenant to vacate would have been 22 May 2022, 10 clear days after the notice was considered to have been served.
16. As the termination notice does not meet the timeframe requirements set out here, it is not a valid notice.

Decision

17. The termination notice issued to the tenant on 11 May 2022 is not a valid notice.
18. The landlord's claim for an order for vacant possession of the rented premises does not succeed.

08 July 2022

Date


John R. Cook
Residential Tenancies Tribunal