

## Residential Tenancies Tribunal

Applications: 2022 No. 0540 NL

Decision 22-0540-00

Jaclyn Casler  
Adjudicator

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### Introduction

1. The hearing was called at 11:15 AM on 01 September 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 her. A review of the tracking number provided (L#2) with the affidavit indicates that the package was not picked up by the tenant, however, 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 currently month-to-month rental agreement that started as a fixed term agreement in May 2021 with the tenant having taken occupancy in April 2021. Current rent is set at \$813.00 a month and a security deposit in the amount of \$400.00 was collected. A copy of the written rental agreement was not 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**

- The landlord is seeking an order for vacant possession.

## **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* (the *Act*).
8. 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**

9. The tenant was not present or represented at the hearing and I was unable to reach her by telephone. 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) 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 she has been properly served.
11. As the tenant was properly served, and any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.

### **Issue 1: Vacant Possession**

#### **Relevant Submissions**

12. The landlord provided a copy of the termination notice issued on 26 May 2022 (L#2). The notice was issued was a non-standard notice under "section 18" of the *Act*, identifying a stated move out date of 31 August 2022. The landlord testified that he had notes regarding instruction given to the building manager to serve the notice on the same day, either to the door or in person.
13. The landlord is seeking an order for vacant possession of the rented premises and testified that he attempted to take possession of the rental premises through a notice of abandonment "2 or 3 weeks ago" and that when the RNC were then brought in to assist with retaking possession, the landlord discovered that the rental premises was occupied by multiple persons other than the tenant. The landlord testified that the tenant was then contacted and that she indicated she still had interest in the rental premises.

## **Analysis**

14. 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.
15. 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.
16. 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*).
17. Regarding the notice that was issued on 26 May 2022, I find that it satisfies the requirements outlined in paragraph 16 and that it was therefore a valid notice.

## **Decision**

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

09 September 2022

Date

  
Ja  
Residential Tenancies Tribunal