

Residential Tenancies Tribunal

Application 2022 No. 706NL

Decision 22-0706-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:15 AM on 01 November 2022 via teleconference.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED], hereinafter referred to as "the landlord". The respondent, [REDACTED] hereinafter referred to as "the tenant", was not 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 is sections 18, 35 and 42 of the *Residential Tenancies Act, 2018*, and rule 29 of the *Rules of the Supreme Court, 1986*.

Preliminary Matters

6. 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*. 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. With her application, the landlord submitted an affidavit stating that tenant had been served with the application, by registered mail, on 18 August 2022. The associated tracking history shows that that letter was not collected by the tenant and it was eventually returned to the landlord. Nevertheless, according to section 42.(6) of the *Residential Tenancies Act 2018*, it is considered served on the fifth day after mailing. 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.

Issue 1: Vacant Possession of Rented Premises

Relevant Submissions

7. The landlord stated that she had entered into a monthly rental agreement with the tenant on 01 September 2020. The agreed rent is set at \$785.00, due on the first day of each month.
8. With her application the landlord submitted a copy of a termination notice (■■■ #1) which she stated was sent to the tenant, by registered mail, on 08 July 2022. That notice was issued under section 18 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 31 October 2022. The associated tracking history shows that that notice was not collected by the tenant and it was returned to the landlord as unclaimed.
9. The tenant has not moved out, as required, and the landlord is seeking an order for vacant possession of the rented premises.

Analysis

10. The relevant subsections of s.18 of the *Residential Tenancies Act, 2018* state:

Notice of termination of rental agreement

18. (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; and

...

(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

11. According to section 35 of the *Act*, a landlord is permitted to serve notices to a tenant by registered mail, and where that mail is not collected by a tenant, it is considered to have been served on the 5th day after mailing, so long as it is properly addressed and sent. The landlord submitted a photograph of the envelope the notice was mailed in, showing that it was properly addressed, and the tracking history shows that it had indeed been sent to the tenant's mailbox. As it was sent on 08 July 2022, it is considered to have been served on the tenant on 13 July 2022.
12. Section 18 of the *Act* allows a landlord to terminate a rental agreement, on 3 month's notice, without having to provide reasons to either the tenant or this Board.
13. As the termination notice was properly served and as it meets all the requirements set out in section 18 and 34 of the *Act*, I find that it is a valid notice.

Decision

14. The landlord's claim for an order for vacant possession of the rented premises succeeds.
15. 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 2: Hearing Expenses

16. The landlord paid a fee of \$20.00 to file this application. As the landlord's claim has been successful, the tenant shall pay this hearing expense.

01 November 2022

Date


John R. Cook
Residential Tenancies Tribunal