

## Residential Tenancies Tribunal

Applications: 2022 No. 0744 NL

Decision 22-0744-00

Jaclyn Casler  
Adjudicator

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### Introduction

1. The hearing was called at 9:03AM on 01 November 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing, as did the respondent [REDACTED], who is hereinafter referred to as "the tenant". [REDACTED] hereinafter referred to as "the authorized representative" participated in this hearing in support of the tenant.
3. The landlord submitted an affidavit of service (L#1) confirming that he served the tenant on 21 October 2022 in person. The landlord testified that the tenant had a personal support worker present at that time. The tenant confirmed service.
4. The details of the claim were presented as a month-to-month rental agreement that started 01 October 2021. Monthly rent is set at \$950.00, POU, and due on the first of the month. The landlord testified that a security deposit in the amount of \$425.00 was collected and he provided a copy of the written rental agreement (L#2).
5. 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

6. 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 are sections 14 and 18 of the *Act*.

## **Preliminary Matters**

9. The rental premises is a ground floor suite located at [REDACTED] [REDACTED]. The tenant resides in unit [REDACTED]. The tenant has a disability impacting the legibility of her speech and so she was supported during the hearing by her authorized representative. I spoke directly to the tenant during the hearing and sought clarity from her after the authorized representative provided interpretation.

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

#### Landlord's Position

10. The landlord submitted a copy of the termination notice issued to the tenant (L#3). The notice is signed and dated 29 July 2022 and the landlord testified that he issued the notice in person on 01 August 2022. The landlord testified that the tenant had a worker present. The stated move out date on the notice is 31 October 2022. The notice was issued under section 18 of the *Act* and it is a standard template notice available from this office.
11. The landlord is seeking an order for vacant possession of the rented premises
12. The landlord testified that he returned the \$425.00 security deposit in good faith on 12 October 2022 to assist with the tenant securing a new rental agreement elsewhere. The landlord further testified that he had the tenant sign a separate agreement that committed her to vacating on or before 21 October 2022, a copy of which was not provided to this tribunal. The landlord testified that he has received a portion of rent for November 2022 from Eastern Health on the tenant's behalf.

#### Tenant's Position

13. The tenant testified that she was alone at the time she received the termination notice from the landlord, but acknowledged receipt of the notice. She was uncertain of the exact date.

## 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 this Tribunal. The validity of such a notice is determined by its compliance with a 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.
15. Specific to a termination notice issued by a landlord under section 18 of the *Act* for a month-to-month tenancy such as this dispute, it is required to comply with each of the following to be deemed valid:

**Part 1:** 18(2)(b) of the *Act* requires that a termination notice be issued not less than 3 months before the end of a rental period where the residential premises is rented month to month.

**Finding:** The tenant in this dispute has a month to month rental agreement and rent is due monthly, paid on her behalf by government. As such, I find that a notice issued on 01 August 2022 is three months before the identified move out date of 31 October 2022.

**Part 2:** 18(9) of the *Act* requires that:

- (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.*

**Finding:** The landlord used the template section 18 notice made available by this tribunal and accurately filled in all required information.

**Part 3:** Section 34 of the *Act* requires that:

*Requirements for notices*

*34. A notice under this Act shall*

- (a) *be in writing in the form prescribed by the minister;*
- (b) *contain the name and address of the recipient;*

- (c) identify the residential premises for which the notice is given; and
- (d) state the section of this Act under which the notice is given.

**Finding:** The landlord used the template section 18 notice made available by this tribunal and accurately filled in all required information. Consistent with 22(f) of the *Interpretation Act*, I find that the fact the notice document used by the landlord is missing the standard heading text (e.g., Landlord's Notice to Terminate – Standard) to have no bearing on the validity of the notice itself.

#### **Implied provisions**

##### *22. In an Act or regulation*

...

- (f) where a form is prescribed, deviations from the form not affecting the substance nor calculated to mislead, do not invalidate the form used;

**Part 4:** Section 35 of the Act identifies permitted means for service of documents.

**Finding:** The landlord served the notice personally to the tenant on the 01 August 2022, and the tenant acknowledged service. Personal service is permitted by section 35(2)(a) of the Act.

16. Accordingly, I find that the Section 18 Termination Notice issued to the tenant on 01 August 2022 (signed and dated 29 July 2022), is a valid notice because it meets all requirements under the Act and it was also properly served.

#### **Decision**

17. The landlord's claim for an order for vacant possession of the rented premises is successful.
18. That 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**

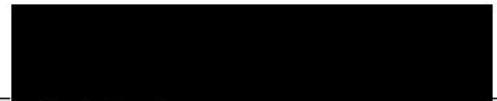
19. The landlord claimed the \$20.00 expense of applying for the hearing. As the landlord's claim has been successful, the tenant shall pay this expense.

## **Summary Decision**

20. The landlord is entitled to the following:

- An order for vacant possession.
- Payment of \$20.00 for hearing expenses.
- Payment from the tenant for 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.

03 November 2022  
Date

  
Jaclyn Casler  
Residential Tenancies Tribunal