

Residential Tenancies Tribunal

Applications: 2022 No. 0766 NL

Decision 22-0766-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:15AM on 05 December 2022 via teleconference.
2. The applicant, [REDACTED] as represented by [REDACTED] hereinafter referred to as "the landlord", participated in the hearing. The respondent, [REDACTED] hereinafter referred to as "the tenant", did not participate in the hearing.
3. An affidavit of service was provided by the landlord (L#1) confirming that the tenant was served by registered mail on 19 October 2022. A review of the associated tracking number confirms that the package was received on 07 November 2022.
4. The details of the claim were presented as a long standing month-to-month rental agreement operating since November 1990. Monthly rent is currently set at \$870.00 and a security deposit in the amount of \$200.00 was collected. A copy of the written rental agreement was not provided.
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 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 contact her by phone at [REDACTED]. 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 they have 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 submitted a copy of a termination notice that was issued on 17 August 2022 (L#2). He testified that the notice was hand delivered to the tenant on 18 August 2022 by the building Resident Manager. The notice was a custom notice (not the standard template), issued under section 18 of the *Act*, and the stated move out date was 30 November 2022.
13. The landlord is seeking an order for vacant possession of the rented premises. The landlord testified that he understands the tenant to be currently in hospital, awaiting transfer to long term care.

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 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.

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. As such, I find that a notice delivered on 18 August 2022 was issued more than three months before the identified move out date of 30 November 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 custom section 18 notice that included 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 custom section 18 notice that included all required information.

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

Finding: The landlord served the notice personally to the tenant on the day after it was issued. 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 18 August 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.

05 December 2022

Date

[Redacted]
Jaclyn Casler
Residential Tenancies Tribunal