

Residential Tenancies Tribunal

Applications: 2022 No. 0881 NL

Decision 22-0881-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 11:15AM on 08 November via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord" participated in the hearing. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as "tenant1" and "tenant2" did not participate or attend the hearing.
3. The landlord submitted two affidavits of service (L#1) confirming that she served both tenants by email, to their respective emails on 07 October 2022. Proof of service by email was also provided. The landlord testified that she knew to serve by email because she served to the emails used for communication with the tenants.
4. The details of the claim were presented as a month-to-month rental agreement that started 01 June 2019. Monthly rent was set at \$600.00, paid bi-monthly and a security deposit was not collected. The rental agreement is verbal.
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*.

Preliminary Matters

9. The tenants were not present or represented at the hearing and I was unable to reach either of them by telephone at the provided numbers: [REDACTED] or [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. Because I was able to confirm that the tenants were properly served notice of the claim against them, I proceeded with the hearing in their absence as any further delay in these proceedings would unfairly disadvantage the landlord.

Issue 1: Vacant Possession

Relevant Submissions

12. The landlord testified that she issued the tenants a three month termination notice on 28 June 2022 (L#2). The landlord testified that she issued the termination notice by email to tenant2 on that day, and proof of email service was provided (L#3). The notice is a standard notice under section 18 of the *Act*, and the stated move out date is 30 September 2022.
13. The landlord stated that she did not serve tenant1 by email because he had not previously provided consent for email communications. The landlord stated that the tenants live together and testified that she has had subsequent communication with each tenants and that they are both aware of the termination notice.
14. The landlord is seeking an order for vacant possession of the rented premises

Analysis

15. 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.

16. 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 Landlord in this dispute has a month to month rental agreement. As such, I find that a notice issued on 28 June 2022 is more than three months before the identified move out date of 30 September 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.

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

Finding: The landlord served the notice by email to tenant2 and proof of service was provided. Because the tenants live together and the landlord testified that she had later conversations with tenant1 about the termination, I am satisfied that both tenants were properly served notice of termination in accordance with section 35 of the *Act*.

17. Accordingly, I find that the Section 18 Termination Notice issued on 28 June 2022, is a valid notice because it meets all requirements under the *Act* and it was also properly served.

Decision

18. The landlord's claim for an order for vacant possession of the rented premises is successful.
19. 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.

15 November 2022

Date

Jaclyn Casler
Residential Tenancies Tribunal