

Residential Tenancies Tribunal

Applications: 2022 No.1049 NL

Decision 22-1049-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 11:15AM on 18 January 2023 via teleconference.
2. The applicant, [REDACTED], as represented by [REDACTED] and hereinafter referred to as "the landlord" participated in the hearing.
3. The respondent, [REDACTED], did not participate and was not represented at the hearing.
4. The landlord submitted an affidavit of service (L#1) confirming that she served the tenant by registered mail on 22 December 2022 and proof of service was provided. A review of tracking associated with this notice, confirms that this package was picked up on 23 December 2022.
5. The details of the claim were presented as a month-to-month rental agreement that started March 2016 with the tenant and her mother. A copy of a 2019 lease renewal was provided (L#2) and the landlord testified that the tenant's mother is now deceased. Monthly rent is tied to income and set at \$466.00. A security deposit was not collected.
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

7. The landlord is seeking an order for vacant possession.

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).
9. Also relevant and considered in this case are sections 18 of the *Act*.

Preliminary Matters

10. The tenant was not present or represented at the hearing and I was unable to reach her by telephone at the provided numbers of [REDACTED] or [REDACTED].
11. 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.
12. 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

13. The landlord is seeking to regain possession of the rental premises located at [REDACTED]. She submitted a copy of the custom termination notice issued on 05 July 2022 (L#3). This notice was served by registered mail on 07 July 2022 and a review of tracking indicates that it was picked up on 08 July 2022. The stated move out date identified on the notice is 31 October 2022.
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 tenant in this dispute has a month-to-month rental. As such, I find that a notice served by registered mail on 07 July 2022 to be more than 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 did not use the use the template section 18 notice made available by this tribunal. Nonetheless, I find that all required information is accurately provided.

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 did not use the use the template section 18 notice made available by this tribunal. Nonetheless, I find that all required information is accurately provided.

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

Finding: The landlord served the notice by registered mail on 07 July 2022. Service by registered mail is permitted by section 35(2)(e) of the *Act*.

17. Accordingly, I find that the Section 18 Termination Notice served to the tenant on 07 July 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.

Issue 2: Hearing Expenses

20. The landlord claimed the \$20.00 expense of applying for the hearing (see page 3 in L#1). As the landlord's claim has been successful, the tenant shall pay this expense.

Summary Decision

21. 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.

20 January 2023

Date

Jaclyn Casler
Residential Tenancies Tribunal