

## Residential Tenancies Tribunal

Applications: 2023 No. 0001 NL

Decision 23-0001-00

Jaclyn Casler  
Adjudicator

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### Introduction

1. The hearing was called at 1:48 PM on 01 February 2023 via teleconference.
2. The applicant, [REDACTED], as represented by [REDACTED], hereinafter referred to as “the landlord”, participated in the hearing, as did the respondents, [REDACTED] and [REDACTED], hereinafter referred to as “tenant1” and “tenant2” respectively.
3. The landlord submitted two affidavits of service, along with proof of service confirming that both tenants were individually served by registered mail on 06 January 2022 (L#1). A review of tracking associated with this mail indicates that both packages were picked on 11 January 2023. The tenants confirmed receipt of service.
4. The details of the claim were presented as a month-to-month rental agreement that started in October 2021. Monthly rent is set at \$880.00, due at the first of the month and the landlord acknowledged a security deposit in the amount of \$78.57 that was paid in October 2022 as a rent supplement overpayment. 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*.

### Issue 1: Vacant Possession

#### Landlord's Position

9. The landlord is seeking to regain possession of the rental premises located at [REDACTED]. She referred to a termination notice, issued on 11 October 2022 that was submitted (L#2). The notice is a custom notice and it identifies a stated move out date of 31 January 2023. The landlord testified that the notice was served to the tenant's door on the day it was issued, and that it was likely served under the door.

#### Tenant's Position

10. The tenants acknowledged receipt of the termination notice under the door of their rental unit and tenant1 asked why it was issued. Tenant1 also testified that she thought it was improper for the notice to be served under the door. She also testified that she thought termination of a tenancies under section 18 of the *Act*, applied to weekly rental agreements only. Tenant2 asked if it was a requirement that landlords provide a copy of the legislation when rental agreements are signed, and declared that the tenants did not receive a copy of the legislation when they took occupancy in October 2021. Tenant1 also testified she has received notices from the landlord for over due balances on her account, and that tenant2 received a written first warning for violating section 10 of the *Act* for noise.

## Analysis

11. 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. 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 tenants in this dispute has a month to month rental agreement and rent is due at the first of the month. As such, I find that the notice issued on 11 October 2022 is more than three months before the identified move out date of 31 January 2023.

**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 a custom section 18 notice. I nevertheless find that all required information is properly filled out.

**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 a custom section 18 notice. I nevertheless find that all required information is properly filled out.

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

**Finding:** The landlord testified that the notice was served under the door on the day it was issued. Service under the door is a valid means of service under 35(2)(d) of the *Act*.

12. Accordingly, I find that the Section 18 Termination Notice issued to the tenants on 11 October 2022, is a valid notice because it meets all requirements under the Act and it was also properly served.

### **Decision**

13. The landlord's claim for an order for vacant possession of the rented premises is successful.
14. 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**


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

### **Summary Decision**

16. 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.

06 February 2023

Date

  
Jaclyn Casler  
Residential Tenancies Tribunal