

Residential Tenancies Tribunal

Application 2023 No. 93NL

Decision 23-0093-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 2:00 PM on 22 February 2023 via teleconference.
2. The applicant, [REDACTED] was represented at the hearing by [REDACTED], hereinafter referred to as "the landlord". The respondent, [REDACTED], hereinafter referred to as "the tenant", was not in attendance.

Issues before the Tribunal

3. The landlord is seeking the following:
 - A determination of the validity of a termination notice she had issued to the tenant on 24 August 2022;
 - An order for a payment of rent in the amount of \$1500.00;
 - An order for a payment of late fees in the amount of \$75.00; and
 - Authorization to retain the \$500.00 security deposit.

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this case is sections 15 and 19 of the *Residential Tenancies Act, 2018* and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

6. The tenant was not present or represented at the hearing and I was unable to reach him by telephone. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme*

Court, 1986. 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 he has been properly served. The landlord submitted an affidavit with her application stating that she sent the application and notice of the hearing to the tenant, by e-mail, on 27 January 2023. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in his absence.

Issue 1: Validity of Notice

Relevant Submissions

7. The landlord stated that she had entered into a 1-year, fixed-term lease with the tenant on 01 November 2021, and a copy of that executed agreement was submitted with her application. The agreed rent was set at \$1000.00 per month and with her application the landlord had submitted a copy of an INTERAC e-Transfer e-mail receipt showing that the tenant had paid a security deposit of \$500.00.
8. The landlord also submitted a copy of her rent records with her application, and she pointed out that in July 2022, she had received no rent from the tenant and he also failed to pay his rent for August 2022. Because of this issue, on 24 August 2022 the landlord issued the tenant a termination notice, and a copy of that notice had also been submitted. According to that notice, the landlord states that she "will be taking back ownership of the residence" on 02 September 2022. The tenant vacated on 04 September 2022.
9. Through her application, the landlord is seeking a determination of the validity of that notice.

Analysis

10. Section 19 of the *Residential Tenancies Act, 2018* states:

Notice where failure to pay rent

19. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),

...

(b) where the residential premises is

- (i) rented from month to month,***
- (ii) rented for a fixed term, or***

(iii) a site for a mobile home, and

the amount of rent payable by a tenant is overdue for 5 days or more, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 10 days after the notice is served on the tenant.

(2) Notwithstanding subsection (1), where the tenant pays the full amount of the overdue rent, including a fee under section 15, before the date specified in the notice under paragraph (1)(a) or (b), the rental agreement is not terminated and the tenant is not required to vacate the residential premises.

...

(4) In addition to the requirements under section 34, a notice under this section shall

- (a) be signed by the landlord;*
- (b) state the date on which the rental agreement terminates and the tenant is required to vacate the residential premises; and*
- (c) be served in accordance with section 35.*

and section 34 of this Act states:

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.*

11. The termination notice submitted by the landlord does not meet these requirements, quoted above, and it is therefore not valid.
12. That notice is not in the form prescribed by the minister, and it does not state the section of the *Residential Tenancies Act, 2018* under with it was issued.
13. Also, this notice does not meet the timeframe requirements set in section 19. The Act states that a notice issued under this section must specify a termination date which is “not less than 10 days after the notice is served on the tenant”.

The words “not less than” mean that these are “clear days” and when counting those days, one does not count the day the notice was issued, nor the day the tenancy was set to terminate. But on 24 August 2022, the date the notice was issued, the earliest the landlord could have required the tenant to move would have been 04 September 2022, and not 02 September 2022, as indicated.

Decision

14. The termination notice issued to the tenant on 24 August 2022 is not a valid notice.

Issue 2: Rent - \$1500.00

Relevant Submissions

15. As indicated in paragraph 8, above, the landlord had received no rent from the tenant for the months of July and August 2022. She is seeking an order for a payment of \$2000.00 for those 2 months. Less the security deposit, the landlord calculates that she is owed \$1500.00.

Analysis

16. I accept the landlord’s testimony and evidence in this matter, and I find that the tenant owes her \$2000.00 for the months of July and August 2022. I deal with the security deposit in section 4, below.

Decision

17. The landlord’s claim for a payment of rent succeeds in the amount of \$2000.00.

Issue 3: Late Fees - \$75.00

18. The landlord has assessed a \$75.00 late fee

Analysis

19. Section 15 of the *Residential Tenancies Act, 2018* states:

Fee for failure to pay rent

15. (1) Where a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister.

The minister has prescribed the following:

Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed:

- (a) \$5.00 for the first day the rent is in arrears, and*
- (b) \$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00.*

20. As the tenant has been in rental arrears since 02 July 2022, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

21. The landlord's claim for late fees succeed in the amount of \$75.00.

Issue 4: Security Deposit

22. The landlord stated that the tenant had paid a security deposit of \$500.00 on 01 November 2021. As her claim for rent and late fees has been successful, the landlord shall retain that deposit as outlined in this decision and attached order.

Summary of Decision

23. The termination notice issued to the tenant on 24 August 2022 is not a valid notice.

24. The landlord is entitled to a payment of \$1575.00, determined as follows:

- a) Rent Owing \$2000.00
- b) Late Fees \$75.00
- c) **LESS: Security Deposit..... (\$500.00)**
- d) Total Owing to Landlord..... \$1575.00

15 March 2023

Date

John R. Cook
Residential Tenancies Tribunal