

Residential Tenancies Tribunal

Application 2023-No.0119-NL

Decision 23-0119-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:09 a.m. on 22-February-2023.
2. The applicant, [REDACTED] represented by [REDACTED], hereinafter referred to as "the landlord" attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as "the tenant" attended by teleconference. The second respondent [REDACTED] no longer lives at the residence.

Preliminary Matters

4. The landlord submitted an affidavit (LL#01) stating that she served her tenants notification of the hearing by express post on 07-February-2023; the tenant confirms he received his notification on 09-February-2023.

Issues before the Tribunal

5. The landlord is seeking vacant possession of the rental premises.

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
7. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 18: Notice of termination of rental agreement, and Section 35: Service of documents.

Issue 1: Vacant Possession of the Rental Premises

Landlord's Position

8. The landlord submitted a written monthly rental agreement (LL#02) held with the tenant. This agreement was initially signed with the homeowner. The homeowner has hired them as the property manager for the properties, their contract is included with evidence (LL#03). The tenant's agreement began 01-February-2019. It is for a monthly term. Rent is \$700.00 and is due the first day of each month. The tenant paid a security deposit of \$350.00 on 22-January-2019, the homeowner is still in possession of the deposit.
9. The landlord submitted two termination notices (LL#04 and LL#05), the first notice is a Section 18 notice. The second notice is a Section 24 notice for interference of peaceful enjoyment and reasonable privacy. The landlord confirmed that she has included evidence for the second notice, however it might not meet the burden of proof, and she removed this notice from her application.
10. The Section 18 notice (LL#04) is dated and signed for 31-October-2022 with a termination date of 31-January-2023. The landlord said that she posted the notice to the tenant's window at 10:45 a.m. on 28-October-2022. She provided an affidavit to describe the service (LL#01). The landlord said that she posted the notice and that a blonde woman who was "extremely angry, cursing and torn (sic) the notice from window."
11. The landlord is seeking an order of vacant possession.

Tenant's Position

12. The tenant disputes the Section 24 notice, he said that he hasn't done anything wrong and he is being harassed.
13. The tenant doesn't dispute the Section 18 notice, he does however, dispute the service; he said he only received notice when he received the hearing package.
14. The tenant is absolutely convinced that the blonde woman did not take the notice off the window. He disputes that the landlord served him notice.

Analysis

15. According to Section 18 of the *Residential Tenancies Act, 2018*:

Notice of termination of rental agreement

18. (2) A landlord shall give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises

- (a) *not less than 4 weeks before the end of a rental period where the residential premises is rented from week to week;*
- (b) ***not less than 3 months before the end of a rental period where the residential premises is rented from month to month; and***
- (c) *not less than 3 months before the end of the term where the residential premises is rented for a fixed term.*

.....

(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.*

Section 35 of the Act states;

Service of documents

35. (1) *A notice or other document under this Act other than an application under section 42 shall be served by a tenant on a landlord by*

- (a) *giving it personally to the landlord;*
- (b) *giving it to a person 16 years of age or older who apparently lives with the landlord;*
- (c) ***posting it in a conspicuous place on the landlord's premises;***
- (d) *placing it in the landlord's mailbox or under a door in the landlord's premises;*
- (e) *sending it to the landlord by prepaid registered mail or prepaid express post at an address*
 - (i) *where rent is payable,*
 - (ii) *provided under subsection 7(7) or (8), or*
 - (iii) *where the landlord carries on business;*

16. In consideration of the tenant's belief that the landlord did not post the termination notice to his window; I accept the landlord's version of events. In these proceedings the standard of proof is referred to as the balance of probabilities, which means the individual has to establish that his/her account of events are more likely than not to have happened. The tenant cannot know with any certainty that this event did not occur. The tenant cannot say that a blonde woman didn't aggressively grab the notice from the window because if he didn't receive the notice or have knowledge of the notice, then he wouldn't have been present to witness this event. The landlord's service of posting the notice in a conspicuous place is appropriate service, if a guest of the tenant removes the

notice then the issue lies with the guest, not with the mode of service. The termination notice submitted by the landlord (LL#04) meets the requirements of the *Act* and is a valid notice.

17. The termination notice is valid and the tenant should have moved on 31-January-2023.

Summary of Decision

18. The tenant shall vacate the premises immediately.
19. 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.
20. The landlord is granted an Order of Possession.

February 27, 2023

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office