

Residential Tenancies Tribunal

Application 2023 No. 135NL

Decision 23-0135-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 2:05 PM on 13 March 2023 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, participated in the hearing. Her witness, [REDACTED] (“[REDACTED]”) was also in attendance.
3. The tenant, [REDACTED], hereinafter referred to as “the tenant”, also participated

Issues before the Tribunal

4. The landlord is seeking an order for vacant possession of the rented premises.

Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
6. Also relevant and considered in this case is section 22 of the *Residential Tenancies Act, 2018*.

Issue 1: Vacant Possession of Rented Premises

Relevant Submissions

7. The landlord and tenant entered into a monthly rental agreement on 24 August 2020. The agreed rent is set at \$850.00, and the tenant stated that she had paid

a security deposit of \$372.00. That rent is paid directly to the landlord, on the tenant's behalf, by Income Support.

8. With her application, the landlord had submitted a copy of a termination notice which she stated she had delivered to the tenant on 28 February 2023. That notice is dated "22 February 2023". That notice was issued under section 22 of the *Residential Tenancies Act, 2018* (notice where tenant's obligation not met), and it had an effective termination date of 28 February 2023.
9. The tenant acknowledged that the landlord had only given her that notice on 28 February 2023.

Analysis

10. According to section 22 of the *Residential Tenancies Act, 2018*:

Notice where tenant's obligation not met

22. (1) *Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes statutory condition 2 set out in subsection 10(1), the landlord may give the tenant notice requiring the tenant to comply with the condition.*

(2) *Where a tenant contravenes statutory condition 2 set out in subsection 10(1) within 3 days after the notice under subsection (1) has been served or within a reasonable time, the landlord may give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises on a specified date not less than 5 days after the notice has been served.*

(3) *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.*

11. I pointed out to the landlord and the tenant at the hearing that according to subsection 22.(2), quoted here, a notice issued under this section of the *Act* must specify a termination date which is at least 5 days after the notice was issued. As the notice was issued on 28 February 2023, the earliest the landlord could have terminated the rental agreement under this section of the *Act* would have been 06 March 2023.
12. As the notice states that the tenant is required to vacate on the same day the notice was issued, it is not a valid notice.

Decision

13. The termination notice issued to the tenant on 28 February 2023 is not a valid notice.
14. The landlord's claim for an order for vacant possession of the rented premises does not succeed.

13 March 2023

Date



John R. Cook
Residential Tenancies Tribunal