

## Residential Tenancies Tribunal

Applications: 2023 No. 0189 NL

Decision 23-0189-00

Jaclyn Casler  
Adjudicator

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### Introduction

1. The hearing was called at 11:10 AM on 14 March 2023 via teleconference.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as "landlord1" and "landlord2" participated in the hearing, as did the respondent, [REDACTED], hereinafter referred to as "the tenant".
3. An affidavit of service was provided by the landlord1 (L#1) confirming that the tenant was served by email on 01 March 2023 and proof of email was provided (L#2). The tenant acknowledged the email address as her own, and that it would have been received on that date, however, she stated did not become aware of the hearing until 08 March 2023.
4. The details of the claim were presented as a fixed term rental agreement that started 01 March 2022. The parties disputed whether it was to expire 28 February 2023 or 31 March 2023. Monthly rent is set at \$1,000.00 due at the first of the month and a \$500.00 security deposit was collected.
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 landlords are seeking an order for vacant possession of the rental premises.

## 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 19 of the *Act*.

## Preliminary Matters

9. The rental premises is a two unit building located at [REDACTED]. The tenant resides in the lower unit (A).

### Issue 1: Vacant Possession of Rented Premises

#### Landlord's Position

10. The landlord submitted a copy of a termination notice issued on 11 February 2023 with an effective date of 27 February 2023 (L#3). The notice was a standard notice of termination under Section 19 of the *Residential Tenancies Act, 2018*. Landlord1 stated that she then issued a second termination notice (L#4) two days later (13 February 2023) with a stated move out date of 01 March 2023 after she received a tenant's request for extension (L#5). Landlord1 did not specify how the notices were served to the tenant.
11. According to the landlords' records, the tenant owed \$1000.00 in rent on the day the second termination notice (e.g., 13 February 2023) was issued. Landlord1 testified that \$1,000.00 was received on 01 March 2023 (e.g., the stated move out date) from the tenant, but testified \$1,000.00 was still owing for March 2023 rent. The landlords are seeking an order for vacant possession of the rented premises because arrears remain on the tenant's account.

#### Tenant's Position

12. The tenant testified that she has text messages with the landlord where landlord1 allegedly writes that she does not care about rent for February 2023. The tenant also testified that she was surprised by this hearing because she thought that she made an arrangement with the landlord1 for vacating the premises. The tenant testified that she completed the tenant's request for an extension because it was a form she found online and she thought it was appropriate. The tenant stated that she received the termination notices from the landlord by text and email on the day they were served.

## Analysis

13. 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.*

14. According to the landlords' records, on 11 February 2023, the date the termination was issued, the tenant was in arrears in the amount of \$1,000.00. Also according to the landlords' records, the tenant paid \$1,000.00 on 01 March 2023, the stated move out date on the notice. Where landlord1 testified that the notice is still valid because rent in the amount of \$1,000.00 for March 2023 was left owing by the tenant on that same day, rent does not legally become overdue until the second of the month. Consequently, I find that the tenant successfully cleared her account of all arrears on 01 March 2023. As such, in accordance with 19(2) of the Act, I find that the landlords' request for vacant possession does not succeed because the notice issued on 13 February 2023 was made invalid once the 01 March 2023 payment was received.

## **Decision**

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

17 March 2023

Date

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