

Residential Tenancies Tribunal

Application 2023-No.0200-NL
2023-No.0278-NL

Decision 23-0200-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 1:54 p.m. on 05-April-2023.
2. The applicant, [REDACTED], represented by [REDACTED] (LL#01), hereinafter referred to as “the landlord” attended by teleconference.
3. The respondent and counter applicant, [REDACTED], hereinafter referred to as “the tenant” also attended by teleconference.

Preliminary Matters

4. The parties both submitted affidavits of service (LL#02 and TT#01). Neither party served the other in accordance with the *Act*. Both parties waived their right to service and proceeded with the hearing.

Issues before the Tribunal

5. The landlord is seeking vacant possession of the rental premises.
6. The tenant is seeking validity of termination notice

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*.
8. Also relevant and considered in this decision is the following section of the *Residential Tenancies Act, 2018*: Section 18: Notice of termination of rental agreement.

Issue 1: Vacant Possession of the Rental Premises**Issue 2: Validity of termination notice**Landlord's Position

9. The landlord submitted the written monthly rental agreement with the tenant (LL#03). He moved in on 01-October-2022. The tenant pays \$950.00 a month rent. His rental period is from the first day of each month until the last with rent due in full on the first day of the month. The landlord confirms that the tenant paid a security deposit of \$712.00 and that they are still in possession of that deposit.
10. The landlord submitted a termination notice (LL#04), it is a Section 18 notice that was dated and signed for 01-January-2023 with a termination date of 31-March-2023. The landlord said that she served the notice personally to the tenant, as well as, posted the notice to his door. She submitted a picture showing that the notice was posted to the door (LL#05). Additionally, she points to the notice provided (LL#04) and states that whenever she serves a notice, she notes the day and time at the top; the notice has 01-January-2023 6:49 p.m. written at the top.
11. The landlord is seeking an order of vacant possession.

Tenant's Position

12. The tenant submitted his copy of the rental agreement (TT#02) and he confirms the details as stated by the landlord.
13. The tenant also submitted his copy of the termination notice (TT#03) and testified that he was served with the notice on 02-January-2023.

Analysis

14. 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.

15. When seeking an Order of Possession the burden of proof is that of the landlord. In the event of a "he said" "she said" situation, as is faced here with the landlord stating that the notice was served on the first day of the month and the tenant stating that it was the second day, consideration is given to the balance of probabilities. This means I must determine what is most likely to have occurred. The landlord, in this case, provided documentation with her own reminder noted at the top of the termination notice (LL#04). She said that whenever she serves a notice, she notes on the notice the date and time served. The landlord's notation sways the balance of probabilities in her favor. I therefore determine that the notice was served, as stated by the landlord, on 01-January-2023.

16. I find 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-March-2023.

Issue 3: Hearing expenses reimbursed \$20.00

18. Both parties submitted the receipt for \$20.00 for the cost of the hearing (LL#06 & TT#04) and pursuant to policy 12.01, as the landlord's claim has been successful, they are entitled to reimbursement of that cost from the tenant.

Summary of Decision

19. The tenant shall vacate the premises immediately.

20. The tenant shall reimburse \$20.00 to the landlord for the cost of hearing expenses.

21. 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.

22. The landlord is granted an Order of Possession.

April 11, 2023

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office