

Residential Tenancies Tribunal

Application 2023-No.0242 -NL Decision 23-0242-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:15 a.m. on 03-May-2023.
2. The applicant, [REDACTED], represented by [REDACTED], hereinafter referred to as "the landlord" attended by teleconference.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as "tenant1 and tenant2" did not attend.

Preliminary Matters

4. The tenants were not present or represented at the hearing and I was unable to reach them by telephone at the start of the hearing. I called the provided number ([REDACTED] [REDACTED]) and was unable to reach tenant2, I left a message. 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 respondents fail to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondents' absence so long as they have been properly served. The landlord submitted an affidavit (LL#01) with their application stating that they had served the tenants with notice of the hearing on 19-April-2023, personally by handing both packages to tenant2. As they were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.

Issues before the Tribunal

5. The landlord is seeking:
 - Vacant possession of 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 is the following section of the *Residential Tenancies Act, 2018*: Section 19: Notice where failure to pay rent.

Issue 1: Vacant Possession of the rental premises

Relevant Submissions

8. The landlord submitted a rental agreement (LL#02) with the application. They entered a written term agreement with tenant1 from 01-March-2022 until 28-February-2023. They later discovered that tenant1 was in a common law relationship and tenant2 also resided at the apartment. They are currently in a monthly agreement. The tenants pay \$820.00 rent a month. The rental period is from the 1st day of the month until the last day; rent is due the 1st day of each month. The landlord said that the tenants paid a security deposit of \$410.00 on 01-March-2022 and they are still in possession of the deposit.
9. The landlord reviewed the rent payments. She explained that on 07-February-2023 they paid \$900.00 rent which brought any rent owed up to date. They have received no subsequent rent payments since that time. She points out that to date there have been 3 months that have gone unpaid: March, April and May.
10. The landlord explained that tenant1 passed away on 31-March-2023.
11. The landlord submitted a termination notice (LL#03). It is on a “landlord’s notice to terminate early – cause” form for failure to pay rent. The notice is signed and dated for 13-March-2023 with a termination date of 24-March-2023.
12. The landlord said that she personally served the termination notice to tenant1 on 13-March-2023.

Analysis

13. Non-payment of rent is a violation of the rental agreement (LL#02). I accept the landlord’s testimony and evidence that the tenants did not pay rent after 07-February-2023.
14. The notice was served under Section 19, of the *Residential Tenancies Act, 2018*, which 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.*

.....

(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.

.....

15. The tenants were in rent arrears in excess of the 5 days when the notice was served. On the date of termination, the tenants were still in arrears. The termination notice meets the requirements of the Act and is a valid notice.
16. The tenants should have vacated the property by 24-March-2023.

Decision

17. The landlord's claim for an order for vacant possession succeeds.
18. The tenants shall vacate the premises immediately.
19. The tenants shall pay to the landlords 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.

Summary of Decision

20. The tenants shall:

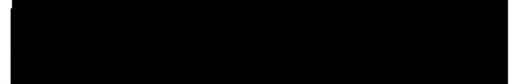
- Vacate the property immediately
- Pay to the landlords any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

The landlord

- Will be awarded an Order of Possession.

May 5, 2023

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office