

Residential Tenancies Tribunal

Application 2023-0333-NL

Decision 23-0333-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:16 a.m. on 08-June-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" did not attend.

Preliminary Matters

4. The tenant was not present or represented at the hearing and I was unable to reach her by telephone [REDACTED] at the start of the hearing. 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 respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as he has been properly served. The landlord submitted an affidavit with their application stating that they had served the tenant with notice of the hearing, by prepaid registered mail, and they included the tracking number [REDACTED]. The tracking number shows that the package was mailed on 19-April-2023 and subsequently returned to sender as it was never delivered. As per Section 35 (5) of the *Residential Tenancies Act, 2018*, the package is considered served on the fifth day. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.

Issues before the Tribunal

5. The landlords are seeking
 - Vacant possession of the rental premises.
 - Hearing expenses \$31.21

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 20: Notice where material term of agreement contravened.

Issue 1: Vacant Possession of the Rental Premises

Relevant Submissions

8. The landlord submitted the rental agreement (LL#02) held with the tenant. It is a monthly agreement that began 10-October-2019. Her rental period is from the 1st day of the month until the last with \$815.00 rent being due in full on the first day of the month. The tenant paid a security deposit of \$600.00 when she moved in. The landlord said that they took over management of the building in June 2021 and they gained possession of the deposit at that time.
9. The landlord explained that the rental agreement (LL#02) clause 6(b) outlines the requirement for tenant's insurance. She has provided a copy of the tenant's submitted insurance that expired last summer on 09-July-2022. The landlord also points out that this insurance is for 1 million liability and they require 2 million.
10. The landlord stated that it is their policy that the Resident Manager sends a letter each month to the tenants who have permitted their insurance to lapse. She provided a copy of one of the letters (LL#03) sent, as a reminder, to the tenant that she needs to renew her insurance; the letter states that this could result in a termination of the rental agreement.
11. The landlord believes that the tenant has been evading the [REDACTED] and refusing to deal with this issue.
12. As the tenant has not complied with the rental agreement, the [REDACTED] served her with a termination notice (LL#05). The notice is on a "Landlord's Notice to Terminate Early – Cause" form for Breach of material term. It is signed and dated for 27-February-2023 with a termination date of 31-March-2023. The landlord reports that the [REDACTED] placed the notice under the tenant's door on 27-February-2023.
13. They are seeking an order of possession.

Analysis

14. In accordance with Section 20 of the Residential Tenancies Act, 2018, as follows:

Notice where material term of agreement contravened

20. (1) Notwithstanding subsection 18(1) and paragraph 18(3)(a), where a landlord contravenes a material term of a rental agreement, the tenant may give the landlord written notice of the contravention, and if the landlord fails to remedy the contravention within a reasonable time after the notice has been

served, the tenant may give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises.

(2) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes a material term of a rental agreement, the landlord may give the tenant written notice of the contravention, and if the tenant fails to remedy the contravention within a reasonable time after the notice has been served, the landlord may give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises.

(3) Where the tenant gives a landlord notice under subsection (1) or the landlord gives a tenant notice under subsection (2) that a rental agreement is terminated, the notice shall be given

(a) not less than 7 days before the end of a rental period where the residential premises is rented from week to week; and

(b) not less than one month before the end of a rental period 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.

(4) 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. The landlord has adhered to the steps required to serve a termination notice under Section 20 of the Act. They provided notice of the contravention and the tenant has failed to show proof of insurance. I find that the termination notice meets the requirements of the Act and the tenant should have moved 31-March-2023.

Decision

16. The landlord's claim for vacant possession succeeds.

Issue 2: Hearing expenses reimbursed \$31.21

17. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#06) and the receipt for the cost of prepaid registered mail \$11.21 (LL#07); pursuant to policy 12.01, is entitled to reimbursement of those costs totaling \$31.21 from the tenant.

Summary of Decision

18. The landlord's claim for an order for vacant possession succeeds.

The tenant shall:

- Vacate the premises immediately.
- The tenant 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.

The landlord shall:

- Retain \$31.21 for hearing expenses from the tenants' security deposit.
- Be awarded for an order for vacant possession

June 09, 2023

Date

[Redacted]
Jacqueline Williams, Adjudicator
Residential Tenancies Office