

Residential Tenancies Tribunal

Application 2023-No.0402 -NL

Decision 23-0402-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 1:59 p.m. on 30-May-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 she has been properly served. The landlord submitted an affidavit (LL#01) with their application stating that they had served the tenant with notice of the hearing, electronically on 08-May-2023 to the tenant's email [REDACTED]. The landlord also provided proof of service and proof of the tenant's email address. 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.
5. The landlord amended their application to remove rent, late fees, returned cheque charges and security deposit applied to monies owed.

Issues before the Tribunal

6. The landlord is seeking:
 - Vacant possession of rental premises
 - Hearing Expenses \$20.00

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 19: Notice where failure to pay rent.

Issue 1: Vacant Possession of rental premises

Relevant Submissions

9. The landlord submitted a lease addendum (LL#02) with the application. They entered a written term agreement with the previous tenants ending 30-April-2023. The tenant took over the former tenants' lease. She moved in on 01-November-2022 and currently she is in a monthly agreement. The tenant pays \$1,070.00 a month rent to the landlord. 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 former tenants paid a security deposit of \$450.00 and the tenant reimbursed them this expense; the landlord now holds this deposit for the current tenant.
10. The landlord submitted a rent ledger (LL#03) and the ledger shows that the tenant had fallen into rental arrears on 02-April-2023. The landlord stated she remained in arrears until this morning where she paid the balance of her rent and fees in full. Currently the tenant does not owe rent.
11. The landlord submitted a termination notice (LL#04). It is on a "landlord's notice to terminate early – cause" form for failure to pay rent. The notice is signed and dated for 12-April-2023 with a termination date of 25-April-2023.
12. The landlord said that the building caretaker reported to her, that she had placed the notice on the tenant's door on 12-April-2023.

Analysis

13. 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.

.....

14. The tenant was in rent arrears in excess of the 5 days when the notice was served. On the date of termination, the tenant was still in arrears. The termination notice meets the requirements of the Act and is a valid notice. The notice was served in accordance of the Act.
15. The tenant should have vacated the property by 25-April-2023.

Decision

16. The landlord's claim for an order for vacant possession succeeds.
17. The tenant shall vacate the premises immediately.
18. 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.

Issue 2: Hearing expenses reimbursed \$20.00

19. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#05) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

Summary of Decision

20. The tenant shall:

- Reimburse the landlord the cost of hearing expenses totaling \$20.00.
- Vacate the property immediately
- 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.

The landlord

- Will be awarded an Order of Possession.

June 06, 2023

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office