



Residential Tenancies Tribunal

Application 2023-0431-NL

Decision 23-0431-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:05 a.m. on 06-June-2023.
2. The applicant [REDACTED] hereinafter referred to as "the landlord" attended by teleconference.
3. The respondent, [REDACTED] hereinafter referred to as "the tenant" attended by teleconference.

Preliminary Matters

4. The landlord submitted an affidavit (LL#01) stating that a process server served the tenant with notification of today's hearing on 23-May-2023. The tenant confirmed receipt of notification as stated by the landlord.

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 are the following sections of the *Residential Tenancies Act, 2018*: Section 24: Notice where tenant contravenes peaceful enjoyment and reasonable privacy as well as, Residential Tenancies policies 01 and 05.

Issue 1: Vacant Possession of the Rental Premises²

Landlord's position

8. The landlord stated that she has a verbal monthly rental agreement with the tenant. She said that the tenant moved in August 2021. She pays \$850.00 a month rent which includes utilities and access to the internet. She said that income support paid \$375.00 security deposit in July 2021 on behalf of the tenant, before she took possession of the apartment.
9. The landlord said that there have been ongoing issues with the tenant and she is seeking vacant possession of the rental premises.
10. The landlord repeatedly claimed that she served the tenant with a notification of termination dated for 12-June-2023. This notification is not included with the landlord's evidence. Included in the landlord's evidence is a termination notice for 12-May-2023 (LL#02), the landlord said that this is not the termination notice in question.

Tenant's position

11. The tenant disputes the terms of the rental agreement as stated by the landlord. She said that she moved into the apartment August 2020. She provided a copy of the Kijiji ad (TT#01) which is dated for August 2020. Additionally she explained that there was a written agreement of terms and that the security deposit paid was \$425.00. She further disputes that the apartment is a legal apartment; she doesn't have a separate mailing address and her bedroom is without a window.

Analysis

12. According to Residential Tenancies Policy 01-006

Proper completion of the application and payment of the application fee is critical to having an application processed by the Residential Tenancies Office and minimizing delays through the dispute resolution process. It is the responsibility of the applicant to provide complete and accurate information about the parties and issues of dispute

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Premises Vacated - A landlord would check this block when he/she is requesting an order for the tenant to vacate the premises and possession of the rental premises returned to the landlord. A copy of the notice of **termination MUST be submitted** with an application seeking vacant possession.

Additionally, Section 05-001 states:

An important principle of natural justice is notice. Notice refers to respondent's **right to be provided with information** about the following so that **the respondent may prepare a defense**:

- the claims being made against the respondent;
- the date, time and place of the hearing;
- the format of the hearing.

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This principle is so important that should a hearing proceed without proper notice being given to all the parties, any resulting decision would be invalid.

13. The landlord claimed that she served the tenant with a termination notice with a termination date of 12-June-2023. This notice is not included in the "Respondent's package." As shown above, an integral component of Natural Justice is the opportunity for the respondent to be provided the information to prepare a defense. This tenant was provided a termination notice dated 06-May-2023 with a termination date of 12-May-2023. Her preparation for today's hearing would have been based on that information.
14. The landlord's claim of a 12-June-2023 termination notice cannot be assessed for two reasons. Firstly the tenant was not notified that this notice was to be considered. Secondly, as today is 12-June-2023, the tenant is not in violation of that notice as she is still permitted to live at the apartment until the end of today.
15. The landlord's claim for an order of vacant possession therefore fails.

Decision

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

June 14, 2023

Date



Residential Tenancies Office