

## **Residential Tenancies Tribunal**

Application 2023-0452-NL

Decision 23-0452-00

Pamela Pennell  
Adjudicator

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### **Introduction**

1. Hearing was called at 2:04 p.m. on 20-June-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 "the tenants" attended by teleconference.

### **Preliminary Matters**

4. The landlord's representative states that there was a written fixed rental agreement in November 2020 which is now a month to month tenancy (LL#1). The tenants moved into the unit on 1-November-2020 and rent is currently \$1300.00 per month due on the first of each month. The landlord states that a security deposit of \$862.50 was paid in October 2020 and is still in the landlord's possession. The tenants agreed with the terms of the agreement.
5. The landlord submitted 2 separate affidavits stating that the tenants were served the notice of hearing on 28-May-2023 personally at the residential premises. Respondent 1 denies being served the documents, but wishes to waive service. Respondent 2 confirms that she received the document on that day.
6. The application was amended to exclude rent paid in the amount of \$2600.00 as rent subsequently was paid in full on 23-May-2023.

### **Issues before the Tribunal**

7. The landlord is seeking:
  - a. Vacant possession of rented premises

### **Legislation and Policy**

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.

9. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 19: Notice where failure to pay rent.

### **Issue # 1: Vacant Possession of the Rented Premises**

#### **Relevant Submissions:**

10. The landlord submitted a termination notice under Section 19: failure to pay rent. The notice was signed and dated for 12-May-2023, with a termination date of 23-May-2023 (LL#2).

#### **Landlord's Position**

11. The landlord's representative states that outstanding rent was paid in full on 23-May-2023 (the termination date) which she states, she is aware that payment makes the termination notice null and void. The landlord's representative states that she is seeking vacant possession due to a long history of rental delinquencies. She testified that rent has been late over 24 times during the tenancy.

12. The landlord's representative submitted 3 previous termination notices to show a history of delinquency (LL#3)

#### **Analysis**

13. Section 19 of the *Residential Tenancies Act, 2018* 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.*

**(2) Notwithstanding subsection (1), where the tenant pays the full amount of the overdue rent, including a fee under section 15, before the date specified in the notice under paragraph (1)(a) or (b), the rental agreement is not terminated and the tenant is not required to vacate the residential premises.**

**(3) Subsection (2) does not apply where notice is given to a tenant under paragraph (1)(a) or (b) more than twice in a 12 month period.**

**(4) In addition to the requirements under section 34, a notice under this section shall**

- (b) be signed by the landlord;
- (c) state the date on which the rental agreement terminates and the tenant is required to vacate the residential premises; and
- (d) be served in accordance with section 35.

14. The tenants were in rent arrears in excess of the 5 days when the notice was served. On the date of termination, 23-May-2023 the tenants paid all outstanding rent. This makes the termination notice void.

15. The landlord submitted a copy of three previous termination notices given under section 19; notice where failure to pay rent. The first notice was dated for 23-January- 2023 to vacate on 3-February-2023, the second notice was given on 15-February-2023 to vacate on 26-February-2023 and the third notice was given on 20-March-2023 to vacate on 31-March-2023.

16. As per Section 19(3) of *the Act* as quoted in paragraph 13, the tenants have been given notice more than twice in a 12 month period thus Section (19) (2) of *the Act* does not apply to them.

17. I find that the tenants should have vacated the property by 23-May-2023.

#### **Decision**

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

19. The tenant's shall vacate the premises immediately

20. The tenant's 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.

#### **Summary of Decision**

21. The tenant's shall vacate the property immediately

22. The tenant's 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.

23. The landlord will be awarded an Order of Possession.

July 5, 2023

Date

  
Pamela Pennell, Adjudicator  
Residential Tenancies Office