

Residential Tenancies Tribunal

Application 2023-0653-NL

Decision 23-0653-00

Seren Cahill
Adjudicator

Introduction

1. Hearing was called at 9:17 am on 01-November-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 him by telephone at the start of the hearing; his number ([REDACTED]) went straight to voicemail. 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 the 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 they have been properly served. The landlord submitted an affidavit (LL#3) with their application, stating that they had served the tenant with notice of the hearing by prepaid registered mail on 28-July-2023. The affidavit states that it was addressed to the rental premises in question, which is where the tenant resides. The tracking number (CA) confirms the date. In accordance with the *Residential Tenancies Act, 2018 (RTA 2018)*, a registered mail package is considered served after five days. 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 his 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 *RTA 2018*.
7. Also relevant and considered is section 18 of the *RTA 2018*, notice of termination of rental agreement.

Issue 1: Vacant Possession of the Rental Premises

8. The landlord and tenant have a month-to-month lease running from the first of the month to the last with rent set at \$800 per month, utilities not included. The landlord received a security deposit of \$382.50 from the tenant in September 2021, and they retain possession of it. The residential premises are an apartment in an apartment building.
9. On 20-July-2023 the landlord posted a termination notice (LL#1) on the door of the tenant's apartment. It is a notice to terminate specifying that it is under section 18 of the *RTA 2018*. This notice is duly signed and dated with the day it was posted. The termination date is given as 31-October-2023.
10. At the time of the hearing the tenant still resides at the premises.

Issue 2: Hearing Expenses

11. The landlord paid an application fee of \$20.00 to Residential Tenancies and provided a copy of the receipt (LL#2).
12. The landlord has also asked for the cost of the registered mail used to serve the tenant to be reimbursed, but no receipt had been provided at the time of the hearing.

Analysis

13. Section 18 of the *RTA 2018* contains the following relevant subsections:
 18. (2) A landlord shall give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises
...
(b) not less than 3 months before the end of a rental period where the residential premises is rented from month to month; and
...
(9) 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.

Section 34 reads as follows:

34. A notice under this Act shall

- (a) be in writing in the form prescribed by the minister;
- (b) contain the name and address of the recipient;
- (c) identify the residential premises for which the notice is given; and
- (d) state the section of this Act under which the notice is given.

Finally, Section 35(2)(c) says:

35. (2) A notice or other document under this Act other than an application under section 42 shall be served by a landlord on a tenant by

...

(c) posting it in a conspicuous place on the tenant's residential premises;

...

14. In this case the termination notice (LL#1) was issued 20-July-2023 for the termination date of 31-October-2023. That is more than the 3 months required under s.18(2) for a month-to-month lease.
15. LL#1 was signed by the person giving the notice. It was given 10 days before the first day of the relevant rental period. It states a termination date, which is the last day of a rental period. It is therefore compliant with s. 18(9), above.
16. LL#1 is in writing. It contains the name of the tenant. It identifies the rental premises which also serves as the address of the tenant. It states the section of the *RTA 2018* it was given under. It is therefore in compliance with s.34, above.
17. Even if a notice itself is compliant with the *RTA 2018*, it is only valid if properly served. This notice was posted on the tenant's apartment door. I accept this to be a conspicuous place on the tenant's residential premises in the context of s. 35(2)(c), above.

Decision

Issue 1: Vacant Possession of the Residential Premises

18. The termination notice complies with all relevant statutory requirements. I find it to be a valid termination notice which ended the tenancy on 31-October-2023. At the time of the

hearing, the tenant had no legal right to occupy the premises. The landlord's request for an order of vacant possession succeeds.

Issue 2: Hearing expenses

19. As the landlord has succeeded in their claim, the tenant shall pay the \$20.
20. It is required that the applicant provide all required documentation prior to their hearing. In the absence of the registered mail receipt, no costs will be awarded.
21. As the tenancy has ended, the security deposit must be dealt with. The landlord may deduct the \$20 hearing fee from the security deposit.

Summary of Decision

22. The tenant shall vacate the premises immediately.
23. The tenant 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.
24. The landlord is granted an order of possession.
25. The landlord shall retain \$20 of the tenant's security deposit.

07-November-2023

Date

Seren Cahill
Residential Tenancies Office