

Residential Tenancies Tribunal

Application 2023-0721-NL

Decision 23-0721-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:13 a.m. on 1-December-2023.
2. The applicant, [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 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 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 with his application stating that he had served the tenant with the notice of hearing personally at the residential premises on 8-November-2023 (LL#1). In accordance with the *Residential Tenancies Act, 2018* this is good service. 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. There is a written term rental agreement which commenced on 3-March-2023 Rent is \$1650.00 per month due on the first of each month. A security deposit of \$900.00 was paid on 3-March-2023 and is still in the landlord’s possession.
6. The landlord amended the application to remove [REDACTED] as a respondent and to exclude the following: rent paid, compensation for damages and utilities paid.

Issues before the Tribunal

7. The landlord is seeking:
 - an Order for Vacant Possession of the 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 and Section 22: Notice where the tenants obligation is not met.

Issue # 1: Vacant Possession of the Rented Premises

Relevant Submissions:

10. The landlord submitted a termination notice under Section 19: Notice where failure to pay rent. The notice was signed and dated for 23-August-2023, with a termination date of 4-September-2023 (LL#2). The landlord gave a second termination notice under Section 22: Notice where tenants obligation is not met (LL#3). The notice was signed on 28-August, with a termination date of 3-September- 2023.

Landlord's Position:

11. The landlord testified that he originally gave a termination notice for nonpayment of rent and testified that rent is currently outstanding in the amount of \$9075.00 for the period of 1-July to 31-December-2023. The landlord testified that he gave a second termination notice for failure to make repairs. The landlord submitted a *Landlord's Request for Repairs form* dated on 14-August-2023 to have repairs completed on 15-August-2023.

Analysis

12. The relevant subsections of section 22 of the *Residential Tenancies Act, 2018* state:

Notice where tenant's obligation not met

22. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes statutory condition 2 set out in subsection 10(1), the landlord may give the tenant notice requiring the tenant to comply with the condition.

(2) Where a tenant contravenes statutory condition 2 set out in subsection 10(1) within 3 days after the notice under subsection (1) has been served or within a reasonable time, the landlord may give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises on a specified date not less than 5 days after the notice has been served.

13. In reviewing the most recent termination notice under section 22, I find that the landlord did not provide the tenant with an adequate amount of time to complete the repairs as listed on the *Landlord's Request for Repairs form*. In accordance with Section 22 of the *Act* as stated above, the landlord did not give at least 3 days to make the requested repairs, and as such, the termination notice is not a valid notice.

14. 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.

(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.

15. The tenant was in rent arrears in excess of the 5 days when the termination notice was served. On the date of termination, 4-September-2023 the tenant was still in arrears. In accordance with Section 19 of the *Residential Tenancies Act, 2018* as stated above, the termination notice meets the requirements of the *Act* and is a valid notice.

16. I find that the tenant should have vacated the property by 4-September-2023.

Decision

17. The landlord's claim for an order for vacant possession of the rented premises succeeds.

18. The tenant shall vacate the premises immediately.

19. 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.

Summary of Decision

20. The landlord is entitled to the following:

- An order for vacant possession of the rented premises.
- The tenant shall vacate the premises immediately.
- 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.

December 7, 2023

Date



Pamela Pennell
Residential Tenancies Office