

Residential Tenancies Tribunal

Application 2023-0747-NL

Decision 23-0747-00

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 1:47 PM on 18 September 2023 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, attended the hearing.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant”, attended the hearing.
4. The details of the claims were presented as a verbal rental agreement with rent set at \$800.00, due the 16th of each month, which is now a monthly agreement since September 2022. The landlord stated a security deposit in the amount of \$400.00, was paid in September 2021, and is still in the landlord’s possession. The landlord initially issued a Landlord’s Notice to Terminate on 18 April 2023 to terminate the tenancy on 16 August 2023 under section 18 of the *Residential Tenancies Act*, 2018 (**Exhibit L # 1**); on 13 August 2023, to terminate the tenancy on 25 August 2023 under section 19 of the *Residential Tenancies Act*, 2018 (**Exhibit L # 2**); and, on 31 August 2023 to terminate the tenancy on 11 September 2023 under section 19 and section 24 of the *Residential Tenancies Act*, 2018 (**Exhibit L #3**). An application for dispute resolution was served in-person on 1 September 2023 (**Exhibit L #4**).
5. In a proceeding under the *Residential Tenancies Act*, 2018, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicant has to establish that his/her account of events are more likely than not to have happened.

Preliminary Matters

6. The landlord is seeking an order of eviction and an order of possession of property of the rental address of [REDACTED].

7. The landlord did not make any amendments to his application during the hearing.

Issues before the Tribunal

8. The landlord is seeking the following:
- An order for vacant possession of the rented premises;
 - Hearing expenses \$20.00

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act*, 2018
10. Also relevant and considered in this case is Section 2, 18, 19, 34 and 35 of the *Residential Tenancies Act*, 2018, along with Policy 12-1 *Recovery of Fees: Filing, Costs, Hearing Expenses, Interest, Late Payment and NSF*.

Issue 1: Vacant Possession of Rented Premises

Landlord Position

11. The landlord offered testimony on 18 April 2023, the tenant was issued a Landlord's termination notice to terminate. The landlord summarized over the past six months, there had been concerns with the tenant paying rent in a timely manner.
12. The landlord offered testimony that he felt he had been accommodating with the tenant's on-going failure to pay rent on time as he specified there had been situations when the tenant had missed rent due on the 16th of each month, by "a few days or a week".
13. The landlord testified that in regards to the Landlord's Notice to Terminate issued on 13 August 2023 under section 19, the tenant paid the full-amount of rent outstanding on 16 August 2023. Regarding the second notice issued under section 19 on 31 August 2023, the landlord stated this was the, "only relevant notice" issued to the tenant.

Tenant Position

14. The tenant testified there has been situations that she has not paid rent by the 16th of recent months and attributed this to experiencing recent financial challenges. The tenant suggested this was due to her monthly old age pension payments being issued on a weekly basis, rather than bi-weekly or month. She informed this has been due to her inability to provide permanent address as she is unsure where she would be residing following being issued her three month notice. The tenant also offered testimony that

she was currently in the process of attempting to secure another living accommodation, but has been unsuccessful due to on-going financial concerns and lack of availability.

15. The tenant testified since being issued the Landlord's notice to terminate in April 2023, she has viewed twenty-six rental units, however did not have the financial means to pay both the security deposit and first month rent at these locations.

Analysis

16. The landlord offered evidence that on 18 April 2023, the tenant was issued a Landlord's Notice to Terminate by 16 August 2023 (**Exhibit L # 1**).
17. The validity of the termination notice is determined by its compliance with the notice requirements identified in sections 18(9) and 34 as well as the service requirements identified in section 35.
18. Section 18(2)(b) requires that when a premises is rented for month to month, the landlord may terminate the tenancy and the tenant is required to vacate the residential premises on a date not less than 3 months before the end of the rental period. On examination of the termination notice issued and submitted into evidence, I find the notice was served on 18 April 2023.
19. Section 18 (9)(c) of the *Residential Tenancies Act*, 2018 states, "*In addition to the requirements under section 34, a notice under this section shall (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*".
20. The evidence offered during the hearing clearly defines the monthly rent is due the 16th of each month. Section 2 (i) of the *Act* clearly speaks to the definition of a rental period.
21. Section 2 (i) states, "*rental period means the weekly or monthly interval at which rent is payable under a rental agreement*". During the hearing, both the landlord and tenant confirmed the verbal rental agreement in place for [REDACTED], has monthly rental payments due on the 16th of each month.
22. On the review of the Notice to Terminate by 16 August 2023, the last day of the rental period should have been 15 August 2023. The first day of the rental period is the 16th of each month. As a result, I find the Notice to Terminate under section 18 is not a valid notice.
23. The landlord issued the tenant a notice under section 19 of the *Residential Tenancies Act*, 2018 (**Exhibit L # 2**) in relation to failure to pay rent on 13 August 2023, with a termination notice of 25 August 2023.
24. The landlord offered testimony that the tenant paid in full on 16 August 2023 for the month of August 2023.

25. Section 19 (2) of the *Residential Tenancies Act*, 2018 requires that if a tenant pays rental arrears in full, the rental agreement is in good standing.

Notice where failure to pay rent 19(2)

(2) Notwithstanding subsection (1), where the tenant pays the full amount of 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.

26. As such, the section 19 Notice to Terminate issued by the landlord for the tenant to be out by 25 August 2023 is not valid.
27. On 31 August 2023, the landlord issued the tenant a subsequent notice to terminate under section 19 of the *Residential Tenancies Act*, 2018 on 11 September 2023 (**Exhibit L # 3**).
28. The evidence offered during the hearing clearly defines the monthly rent is due the 16th of each month.
29. The landlord offered testimony on the date of the hearing (18 September 2023), the tenant was in rental arrears in the amount of \$800.00 for September 2023.
30. Section 19 (1)(b) of the *Residential Tenancies Act*, 2018 identifies requirements of notices of failure to pay rent applicable to this monthly rental agreement:

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,

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.

31. The rent for September 2023 is not overdue for 5 days or more on the date of the hearing (18 September 2023).
32. According to the reasons identified above, I find all termination notices issued by the landlord to be improper and not valid. Therefore, the landlord is not entitled to an order for vacant possession of the property and therefore the claim for vacant possession fails.

Decision

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

Issue 2: Hearing Expenses- \$20.00

Landlord Position

34. The landlord paid an application fee of \$20.00 (**Exhibit L # 5**). The landlord is seeking the cost.

Analysis

35. I have reviewed the testimony and evidence of the landlord in this matter. The expenses incurred by the landlord are considered a reasonable expense and are provided for with in Policy 12-1 *Recovery of Fees: Filing, Costs, Hearing Expenses, Interest, Late Payment and NSF*. As the landlord claim has failed, I find the tenant is not responsible to cover these expenses.

Decision

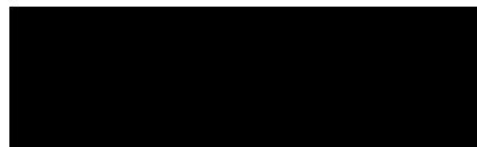
36. The landlord's claim for hearing expense fails.

Summary of Decision

37. The landlord's claims fail.

05 October 2023

Date



Michael J. Reddy
Residential Tenancies Office