Residential Tenancies Tribunal

Application 2023-0755-NL   Decision 23-0755-00

Michael Reddy
Adjudicator

Introduction

1.   The hearing was called at 9:16 AM on 19 September 2023 via teleconference.

2.   The applicant, ▮▮▮▮▮, hereinafter referred to as "the landlord", attended the hearing.

3.   The respondents, ▮▮▮▮▮▮, hereinafter referred to as "the tenant", did not attended the hearing.

4.   The details of the claims were presented as an oral monthly rental agreement with rent set at $700.00, due on the 1st of each month. There was a security deposit collected on this tenancy in the amount of $350.00, still in possession of the landlord. The tenant has resided at ▮▮▮▮▮▮▮ since April 2019. The landlord issued a termination notice on 1 May 2023 to terminate the tenancy on 31 July 2023 under section 18 of the *Residential Tenancies Act*, 2018 **(Exhibit L # 1)**. The tenant was served in person at ▮▮▮▮▮▮▮ at approximately 2:10 PM on 28 August 2023 under section 42 of the *Residential Tenancies Act*, 2018 **(Exhibit L #2)**.

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 amended his application during the hearing and did not wish to seek hearing expenses.

7.   The tenant was not present or represented at the hearing and I was unable to reach her by telephone as there was no contact telephone information or electronic e-mail contact information. 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 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 she has been properly service. The landlord submitted an affidavit stating that he served the tenant on 28 August 2023. As the tenant was properly served, and as further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.

Issues before the Tribunal

8.   The landlord is seeking the following:

- An order for eviction and possession of property

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 S. 18, 34, 35 and 42 of the *Residential Tenancies Act*, 2018, and rule 29 of the *Rules of the Supreme Court*, 1986.

Issue 1: Order for eviction/ possession of property

11.   The landlord presented testimony the rental agreement of the rented premises located at ███████████████████████████████████, is a verbal monthly tenancy.

12.   The landlord offered evidence of a Notice to Terminate the tenancy under Section 18 of the *Residential Tenancies Act*, 2018 **(Exhibit L # 1)**.   Section 18 (2) (b) of the *Act,* states:

> **Notice to termination of rental agreement**
>
> **(2)** *A landlord shall give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential property*
>
> > **(b)** *not less than 3 months before the end of a rental period where the residential premises is rented from month to month*.

13.   On examination of the termination notice and submitted into evidence, I find the notice served on 1 May 2023 with a terminated date of 31 July 2023. I find that as the date of termination identified on the notice not less than 3 months before the end of the rental period and the date the tenant is required to move out, the termination notice is in full compliance with the requirements of Section 18 (2)(b).

14.   Section 18 (9) and 34 identify the technical requirements of the termination notice. On examination of the termination notice, I find all these criteria have been met.

> **Section 18 (9)**
>
> *In addition to the requirements under Section 34, a notice under this section shall*
>
> *(a) be signed by the landlord;*
> *(b) be given not later than the first day of the rental period;*
> *(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.*
>
> **Section 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.*

15.   As identified above, the landlord testified that the termination notice was served personally which is a permitted method of service identified under Section 35.

16.   According to the reasons identified above, I find that the termination notice issued by the landlord to be proper and valid. Therefore, the landlord is entitled to an order for vacant possession of the property along with an order for any and all costs associated with certifying the orders or with the Sheriff to enforce such a Possession Order should the Sheriff be engaged to execute the Possession Order.

Decision

17.   The landlord's claim for an order for vacant possession does succeed. The landlord is further awarded cost associated with the certification and enforcement of the Possession Order by the High Sheriff of NL.

Summary of Decision

18.   The landlord is entitled to the following:

- An order for vacant possession of the rented premises,

- The tenant shall also 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.

26 September 2023
_____
Date

_____
Michael J. Reddy
Residential Tenancies Office