

Residential Tenancies Tribunal

Application 2023-0800-NL

Decision 23-0800-00

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 1:45 PM on September 27, 2023 via teleconference.
2. The applicant, [REDACTED], represented by [REDACTED], hereinafter referred to as “the landlord”, attended the hearing.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant”, did not attend the hearing.
4. The details of the claims were presented as a written agreement with rent set at \$263.00 and due on the 1st of each month. The tenant moved in to the residential property at [REDACTED] on 25 March 2015. There was no security deposit collected on this tenancy and the current rental agreement was monthly (**Exhibit L # 1**). The landlord issued a termination notice on 16 August 2023 to terminate the tenancy on 31 August 2023 under section 19 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 tenant was not present at the start of the hearing, nor was there any contact information in relation to the tenant. The landlord provided a contact telephone for the tenant [REDACTED]). At 1:45 PM, an attempt to reach the tenant was made, at which time, there was no contact established, and no option available to leave a telephone message. This Tribunal’s policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court*, 1988.

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 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.

7. The landlord submitted an affidavit with her application which suggests the tenant was served by registered mail on 16 August 2023 (**Exhibit L # 3**). The landlord also provided a tracking number for the registered mail. This tracking information shows the registered mail meets the timeline requirements of the *Residential Tenancies Act*, 2018. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded in the tenant's absence.
8. The landlord amended her application to include hearing expenses (\$20.00), along with vacant possession of the rental property at [REDACTED], [REDACTED], NL.

Issues before the Tribunal

9. The landlord is seeking the following:
 - An order for vacant possession; &
 - An order for payment of hearing expenses.

Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act*, 2018
11. Also relevant and considered in this case is S. 19, 34 and 35 of the *Residential Tenancies Act*, 2018, and rule 29 of the *Rules of the Supreme Court*, 1986.

Issue 1: Order for Vacant Possession

12. The landlord stated that there is a written monthly rental agreement established with the tenant and that the tenant has occupied the rental premises since 25 March 2015. A copy of the rental agreement was submitted by the landlord (**Exhibit L # 1**).
13. The landlord submitted termination Notice under Section 19, notice where failure to pay rent (**Exhibit L # 2**).

Analysis

14. Section 19 of the *Residential Tenancies Act*, 2018 states:

a. **Notice where failure to pay rent**

b. **19. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),**

i. *(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*

c. *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.*

i. *(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 had been in rental arrears in excess of the 5 days when the notice was served on 16 August 2023 to be out of [REDACTED] on 31 August 2023. I accept the landlord's testimony and evidence that the tenant had failed to pay rent as required. The termination notice is a valid notice.

16. I find the termination notice is a valid notice.

Decision

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

Issue 2: Hearing Expenses- \$20.00

18. The landlord paid an application fee of \$20.00 (**Exhibit L # 5**). While the landlord also paid registered mail fee, the Hearing Expense Claim (**Exhibit L # 6**) provided by the landlord only identified the application fee, nor were there any receipts provided by the landlord in relation to the registered mail fee. I find the landlord shall be offered \$20.00 for the hearing expense.

Decision

19. As the landlord's claim has been successful, the tenant shall pay the landlord's hearing expense of **\$20.00** for the costs of filing this application.

Summary of Decision

20. The landlord is entitled to the following:

- A payment of **\$20.00**, as determined as follows:
 - a) Hearing expenses.....\$20.00
 - b) Total.....**\$20.00**
- 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

23 October 2023

Date


Michael J. Reddy
Residential Tenancies Office