

Residential Tenancies Tribunal

Application 2023-0898-NL

Decision 23-0898-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:14 a.m. on 16-November-2023.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, attended the hearing by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant” did not attend the hearing.

Preliminary Matters

4. The respondent was not present 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 respondents fail 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 her application stating that she had served the tenant with the notice of hearing via prepaid registered mail ([REDACTED]) on 26-October-2023 (LL#1). Canada Post mail tracking indicates that the tenant did not retrieve the mail. In accordance with the *Residential Tenancies Act, 2018* registered mail is considered served 5 days after it has been sent. 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 no rental agreement in place as the tenant was supposed to vacate the unit before the landlord (new owner) took possession of the property in July 2023. The landlord is unsure as to when the tenant initially moved into the unit. Rent is \$700.00 per month, paid by Income Support on the first of each month. A security deposit of \$350.00 was transferred to the landlord in the sale of the house and is still in the landlord’s possession.

Issues before the Tribunal

6. The landlord is seeking:
 - An order for vacant possession of the rented premises
 - Hearing expenses \$35.50

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
8. Also, relevant and considered in this decision is the following section of the *Residential Tenancies Act, 2018*: Section 18: Notice of termination of rental agreement. Also, relevant and considered is the following section of the *Residential Tenancies Policy Manual*; Section 12-1: Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF.

Issue # 1: Vacant Possession of the Rented Premises

Relevant Submissions

9. The landlord submitted a copy of a discontinuation agreement between herself and the tenant whereby the tenant responded in writing stating that she agrees to vacate the unit on 15-November-2023 under Section 18 (5) of the *Residential Tenancies Act, 2018* (LL#2). The landlord testified that the agreement was made on September 18, 2023.

Analysis

10. The discontinuation agreement was entered into on 18-September-2023 whereby both parties agreed to terminate the tenancy on 15-November-2023. The agreement contained all relevant information such as the names of the landlord and the tenant, the address of the residential premises and the relevant section of the *Act*. Section 18(5) of the *Residential Tenancies Act, 2018*, states:

Notice of termination of rental agreement

18. (5) Notwithstanding subsections (1) to (3), a notice of termination is not required to be given where a landlord and a tenant agree in writing to terminate the rental agreement on a specific date.

11. The discontinuation agreement was a valid agreement via text messaging between the landlord and tenant. Case law supports the recognition of agreements made via digital means such as text messaging. In this instance, the text messages were written in clear unequivocal language, with a clear, confirmed response by the tenant.
12. I find a termination notice was not required as the discontinuation agreement meets the requirements of Section 18(5) as stated above. In accordance with the *Residential Tenancies Act, 2018* the discontinuation agreement is valid.
13. I find that the tenant should have vacated the premises by 15-November-2023

Decision

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

15. The tenant shall vacate the premises immediately.
16. 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.

Item # 2: Hearing Expenses \$35.50

17. The landlord paid an application fee of \$20.00 to *Residential Tenancies*. The landlord also incurred postal fees in the amount of \$15.50 and provided a copy of the receipts (LL#3).
18. In accordance with Section 12-1 of the *Residential Tenancies Policy Manual*, if an award does not exceed the amount of the security deposit, hearing expenses related to the filing fee will not be awarded. As the landlord's claim has been successful for vacant possession, the filing fee of \$20.00 will not be awarded, however the remaining expenses in the amount of \$15.50 will be awarded.
19. I find that the tenant is responsible in part for the hearing expenses claimed.

Decision

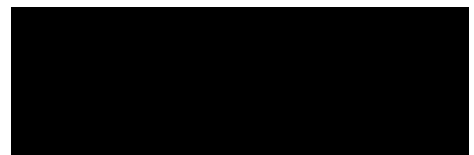
20. The landlord's claim for hearing expenses succeeds in the amount of \$15.50.

Summary of Decision:

21. The tenant shall vacate the premises immediately.
22. The tenant shall pay the landlord \$15.50 for hearing expenses.
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 will be awarded an Order of Possession.

November 29, 2023

Date



Pamela Pennell
Residential Tenancies Office