

Residential Tenancies Tribunal

Application 2023-0916-NL

Decision 23-0916-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:02 a.m. on 7-November-2023.
2. The applicant, [REDACTED].., represented by [REDACTED]
[REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.

Preliminary Matters

4. The landlord submitted an affidavit with their application stating that they had served the tenant with the notice of hearing personally at the residential premises on 18-October-2023 (LL#1). The tenant confirmed receiving the document. In accordance with the *Residential Tenancies Act, 2018* this is good service.
5. There is a written month to month rental agreement which commenced on 1-December-2018 (LL#2). Rent is \$920.00 per month due on the first of each month. A security deposit of \$600.00 was paid on 21-November-2018 and is in the landlord’s possession.

Issues before the Tribunal

6. The landlord is seeking an Order of Vacant Possession on the rented premises.

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 are the following sections of the *Residential Tenancies Act, 2018*: Section 19: Notice where failure to pay rent.

Issue # 1: Vacant Possession of the Rented Premises

Relevant Submissions:

9. The landlord submitted a copy of a termination notice given under Section 19: Notice where failure to pay rent. The notice was signed and dated for 11-September-2023, with a termination date of 23-September-2023 (LL#3). Also, relevant are 2 other termination notices that were given in May and June 2023 under Section 19 (LL#4) and the rental ledger showing the history of payments and delinquencies (LL#5).

Landlord's Position:

10. The landlord testified that the tenant has continuously been late in paying rent and has been given termination notices on 3 different occasions. The landlord stated that the rent eventually gets paid but rarely on time. The landlord is seeking an order for vacant possession and feels that the tenant should have vacated the unit on 23-September-2023.

Tenant's Position

11. The tenant did not dispute the landlord's claim that rent is continuously late. The tenant confirmed that she has received 3 termination notices and the tenant stated that she always paid the rent before the termination date which in her opinion allowed her to stay in the unit. The tenant stated that when she received the termination notice on 11-September, she paid her rent in full on 16-September which was prior to the termination date. The tenant stated that she believes that the termination notices are invalid and wishes to stay in the unit.

Analysis

12. 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.

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

(3) Subsection (2) does not apply where the notice is given to a tenant under paragraph (1)(a) or (b) more than twice in a 12 month period.

(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.*

13. The tenant was in rent arrears in excess of the 5 days when the last notice was served. On the date of termination, 23-September-2023 the tenant was no longer in arrears. As the termination notice under Section 19 was the third notice given to the tenant in the last 12-month period, I find that in accordance with Section 19 (3) as stated above, the termination notice meets the requirements of the *Act* and is a valid notice.

14. I find that the tenant should have vacated the property by 23-September-2023.

Decision

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

16. The tenant shall vacate the premises immediately.

17. 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

18. 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.

November 20, 2023

Date

Pamela Pennell
Residential Tenancies Office