

Residential Tenancies Tribunal

Application 2023-0957-NL

Decision 23-0957-00

Seren Cahill
Adjudicator

Introduction

1. Hearing was called at 9:04 am on 14-November-2023.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord,” attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant,” attended by teleconference.

Issues before the Tribunal

4. Is the termination notice dated 09-August-2023 valid?
5. Should the landlord be granted an order for vacant possession?

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018 (RTA 2018)*.
7. Also considered and referred to in this decision are sections 19(1) and 34 of the *RTA 2018*, as follows:

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.

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.

Issue 1: Vacant Possession of the Rental Premises

Landlord's Position

8. The landlord submits that he has received no rent from the tenant since the rental agreement began on 01-August-2023. He says that while the tenant has done some work on the rental property, the tenant has been compensated for all of it. He adds that he is a 72-year-old working man and that the situation has caused him financial hardship and distress. He submitted a termination notice (LL#1) which was issued on 09-August-2023 and names a termination date of 20-August-2023. It is issued under the authority of the *RTA 2018* and identifies that it is a termination for failure to pay rent under section 19.

Tenant's Position

9. The tenant agrees that he has paid no rent since before August. He submits that he has done significant work on the house for which he has not been compensated, and his refusal to pay rent is to recover the value of this work. He further disputes the rental agreement, claiming to have never signed it and that the tenant-landlord relationship is still governed by a previous rental agreement. The tenant agrees that he received the termination notice submitted by the landlord.

Analysis

10. A termination notice is only valid if it does not conflict with the *RTA 2018*. In the case of a notice under section 19, Notice where failure to pay rent, the notice specifically must comply with the general notice provisions under section 34, the requirements listed in section 19, and the service requirements under section 35.
11. LL#1 is in writing in the form prescribed by the Minister. It contains the name and address of the tenant. It identifies the residential premises it regards. It specifies that it is issued under section 19 of the *RTA 2018*. It is therefore compliant with section 34.
12. While parties disagree on some terms of the rental agreement, they agree that it runs month-to-month.
13. The termination notice is dated 09-August-2023 and gives a move out date of 20-August-2023. S. 19(1)(b)(i) requires that, for a month-to-month lease, places two requirements on landlords as to the timeline of events, i.e., the rent must have been overdue for 5 days or more and the move out date must be not less than 10 days after the tenant is served. On the date the notice was issued, rent had been overdue for more than five days, and there were ten clear days until the move out date.

14. The notice was served electronically, via email, at an address that had been provided by the tenant, and the tenant did not dispute this.
15. Given the above, the termination notice is valid unless I find that the tenant has paid his rent. Parties agree that he has not. Therefore, the termination notice is valid.
16. The tenant explained that he had not paid rent as the landlord owed him money for repair work he had done on the premises. I need not evaluate the truth of this claim because it is irrelevant. The *RTA 2018* does not make this a valid excuse for nonpayment of rent. The tenant had other options available. Depending on the circumstances, the tenant might have required that the landlord effect the repairs, sought to claim the money owed in court, or applied to the director for a remedy. Instead, he used the claim as a defense against an attempted eviction. To allow this as a potential defense in this way would effectively reverse the onus of a claim for moneys owed; as the applicant, the landlord would have to prove that he does not owe the tenant money. In general, the law does not expect a person to prove a negative, and this case is no exception.

Issue 2: Vacant Possession

17. I have determined that a valid termination notice ended the tenancy on 20-August-2023. At the time of the hearing, the tenant had no legal right to occupy the premises.

Issue 3: Hearing Expenses

18. The landlord paid an application fee of \$20.00 to Residential Tenancies and provided a copy of the receipt (LL#2).
19. The landlord also says he paid \$90 to have his affidavit of service witnessed by a notary public (a commissioner of oaths would not suffice as he was out of the province). However, no receipt has been provided.

Decision

20. The landlord's request for an order of vacant possession succeeds.
21. As the landlord has succeeded in his claim, the tenant shall pay the \$20 hearing fee.
22. It is required that the applicant provide all required documentation prior to their hearing. In the absence of a receipt, no costs will be awarded for the services of a notary public.
23. As the tenancy has ended, the security deposit must be dealt with. The landlord may deduct the \$20 hearing fee from the security deposit.

Summary of Decision

24. The tenant shall vacate the premises immediately.

25. The tenant shall pay to the landlord any costs charged to the landlord, by the Office of the High Sherriff, should the landlord be required to have the Sheriff enforce the attached Order of Possession.
26. The landlord is granted an order of possession.
27. The landlord shall retain \$20 of the tenant's security deposit.

15-November-2023

Date



Seren Cahill
Residential Tenancies Office