

Residential Tenancies Tribunal

Application 2023-0987-NL

Decision 23-0987-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:57 p.m. on 23-November-2023.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as “the landlords” attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant” did not attend.

Preliminary Matters

4. The tenant was not present or represented 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 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. The landlords submitted an affidavit with their application stating that they had served the tenant with the notice of hearing via pre-paid registered mail ([REDACTED]) on 23-October-2023. Canada Post 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 landlords, I proceeded with the hearing in her absence.
5. There is a written month to month rental agreement which commenced on 1-August-2018 with an updated rental agreement in January 2023. Rent is \$1100.00 per month due on the first of each month. A security deposit was never paid.

Issues before the Tribunal

6. The landlord is seeking an Order for 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 termination notice under Section 19: Notice where failure to pay rent. The notice is signed and dated for 7-October-2023, with a termination date of 18-October-2023 (LL#2).

Landlord's Position:

10. The landlords testified that rent has been in arrears since October 2023 and they want the tenant to vacate the unit. The landlords stated that they feel that the tenant should have vacated the premises on 18-October-2023.

Analysis

11. 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.

(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.

12. The tenant was in rent arrears in excess of the 5 days when the termination notice was served. On the date of termination, 18-October-2023 the tenant was still in arrears. In

accordance with Section 19 of the *Residential Tenancies Act, 2018* as stated above, the termination notice meets the requirements of the *Act* and is a valid notice.

13. I find that the tenant should have vacated the property by 18-October-2023.

Decision

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

15. The tenant shall vacate the premises immediately.

16. The tenant shall pay to the landlords any costs charged to the landlords by the Office of the High Sheriff should the landlords be required to have the Sheriff enforce the attached Order of Possession.

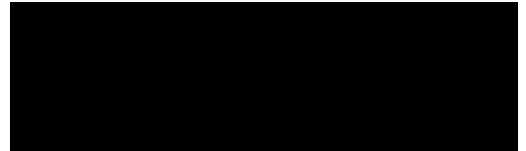
Summary of Decision

17. The landlords are 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 landlords any costs charged to the landlords by the Office of the High Sheriff should the landlords be required to have the Sheriff enforce the attached Order of Possession.

December 4, 2023

Date



Pamela Pennell
Residential Tenancies Office