

Residential Tenancies Tribunal

Application 2023-1014-NL

Decision 23-1014-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:59 p.m. on 1-February-2024.
2. The applicant, [REDACTED] hereinafter referred to as “the landlord”, attended the hearing by teleconference. [REDACTED] was also present.
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 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 landlord submitted an affidavit with her application stating that she served the tenant with the notice of hearing via prepaid registered mail [REDACTED] on 11-December-2023 (LL#1). In accordance with the *Residential Tenancies Act, 2018* registered mail is considered served after 5 days. 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 a verbal month to month rental agreement which commenced approximately 2 ½ years ago. Rent is \$925.00 per month, due on the 29th of each month. A security deposit was never paid.

Issues before the Tribunal

6. The landlord is seeking:
 - An order for vacant possession of 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 is the following section of the Residential Tenancies Act, 2018: Section 18: Notice of termination of rental agreement.

Issue # 1: Vacant Possession of the Rented Premises

Relevant Submissions

9. The landlord submitted a copy of a termination notice issued to the tenant on a *Landlord's Notice to Terminate – Standard form (LL#2)*. The notice was dated for 24-October-2023 under Section 18; Notice of termination of rental agreement to vacate the premises on 31-January-2024.

Analysis

10. The notice was served under Section 18 of the *Residential Tenancies Act, 2018* which states:

Notice of termination of rental agreement

18. (2) A landlord shall give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises

(a) not less than 4 weeks before the end of a rental period where the residential premises is rented from week to week;

(b) not less than 3 months before the end of a rental period where the residential premises is rented from month to month; and

(c) not less than 3 months before the end of the term where the residential premises is rented for a fixed term.

.....

(9) In addition to the requirements under section 34, a notice under this section shall

(a) be signed by the person providing the notice;

(b) be given not later than the first day of a rental period;

(c) state the date, which shall be the last day of a rental period, on which the rental agreement terminates and the tenant intends to vacate the residential premises or the date by which the tenant is required to vacate the residential premises; and

(d) be served in accordance with section 35.

11. The termination notice submitted by the landlord does not meet the requirements of not less than 3 months **before the end of a rental period** where the residential premises is rented month to month. I asked the landlord if rent was due on the 1st of the month and payments were made early on the 29th of the month and she responded that rent has always been due on the 29th of each month. The termination notice gave a termination date of 31-January-2024 which is 3 days past the first day of a new rental period. In accordance with the *Residential Tenancies Act*, 2018 as stated above, the termination notice does not meet the requirements of the *Act* and as such, I find that the termination notice is not a valid notice.
12. I find that the tenant may remain at the residential premises until such time as a proper termination notice is received.

Decision

13. The landlord's claim for an order of vacant possession does not succeed.

Summary of Decision:

14. The termination notice is not a valid notice.
15. The tenant may remain at the residential premises until such time as a proper termination notice is received.
16. The landlord will not be awarded an Order of Possession.

February 7, 2024

Date



Pamela Pennell
Residential Tenancies Office