

Residential Tenancies Tribunal

Application 2023-1060-NL

Decision 23-1060-00

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 07-December-2023.
2. The applicant, [REDACTED], attended by teleconference along with his wife, [REDACTED]. They are hereinafter referred to as the landlords.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as the tenants, also attended by teleconference.

Issues before the Tribunal

4. Should the landlords be granted an order of vacant possession?

Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).
6. Also considered in this decision are subsections 19(1) and (4), as well as section 34 of the *RTA 2018* as follows:

19. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),

(a) where the residential premises is rented from week to week and the amount of rent payable by a tenant is overdue for 3 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 3 days after the notice is served on the tenant; and

(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.

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

Landlord's Position

7. The landlords say they have not been paid rent since approximately July 2018. They submit they have tried to work with the tenants to no avail.

Tenant's Position

8. The tenants acknowledge that they have not been paying rent. They say they felt they had paid the landlords enough. They have been living in the premises for over 15 years and see it as their home. They add that they have been doing constant repairs and working on the building.

Analysis

9. For a termination notice to be valid it must comply with the *Act*. The landlords supplied a copy of the notice they issued the tenants (LL#1). It is in writing in the form prescribed by the minister. It contains the name and address of the recipient. It identifies the residential premises in question. It specifies that it is a notice under s. 19. It therefore complies with the requirements under section 34.

10. LL#1 Is signed by the landlord. It was issued on 07-November-2023 and gives a move out date of 25-November-2023. It was issued to the tenants by registered mail, meaning it was considered served under the *Act* as of 12-November-2023. It therefore meets the requirements of s. 19(4). It also meets the notice requirement under s. 19(2).
11. The tenants said they could have afforded to pay rent, but instead they were paying the money to fix things around the premises. This is not an excuse under the *Act*. Tenants must pay rent and in return one of the things they receive is the right to demand the landlord make repairs when necessary. Alternative arrangements are possible but only via mutual consent. The tenants cannot simply decide that they will take care of the home and it will therefore become theirs.
12. As the nonpayment of rent is not in dispute and LL#1 is in compliance with all relevant parties of the *Act*, the tenancy ended as of 25-November-2023. Insofar as the tenants are still living at the premises, they are doing so illegally.

Decision


13. The landlord's request for an order of vacant possession succeeds.
14. Costs were not sought and as such no order is made to costs.

Summary of Decision

15. The tenants shall vacate the property immediately.
16. The tenants 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.
17. The landlord is granted an order of possession.

15-December-2023

Date



Seren Cahill
Residential Tenancies Office