

Residential Tenancies Tribunal

Application 2023-1061-NL

Decision 23-1061-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:12 a.m. on 5-December-2023.
2. The applicant, [REDACTED].., represented by [REDACTED] [REDACTED], hereinafter referred to as “the landlord”, attended the hearing by teleconference.
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 him 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 respondents fail to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent’s absence so long as he has been properly served. The landlord submitted an affidavit with their application stating that they had served the tenant with the notice of hearing via prepaid registered mail ([REDACTED]) on 15-Novemberer-2023 (LL#1). Canada Post mail 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 landlord, I proceeded with the hearing in her absence.
5. There is a verbal rental agreement in place and the tenant moved in at least 5 years ago. The new owner took possession of the property in January 2023. The landlord is unsure as to when exactly the tenant initially moved into the unit. Rent is \$950.00 per month, due on the first of the 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
 - Hearing expenses \$33.44

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. Also, relevant and considered is the following section of the *Residential Tenancies Policy Manual*; Section 12-1: Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF.

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). It was dated for 20-July-2023 under section 18; Notice of termination of rental agreement to vacate the premises by 31-October-2023 (LL#2).

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 meets the requirements of not less than 3 months before the end of a rental period where the residential premises is rented month to month. In accordance with the *Residential Tenancies Act, 2018* the termination notice is a valid notice.

12. I find that the tenant should have vacated the premises by 31-October-2023

Decision

13. The landlord's claim for an order of vacant possession succeeds.

14. The tenant shall vacate the premises immediately.

15. 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.

Item # 2: Hearing Expenses \$33.44

16. The landlord paid an application fee of \$20.00 to *Residential Tenancies*. The landlord also incurred postal fees in the amount of \$13.44 and provided a copy of the receipts (LL#3).

17. In accordance with Section 12-1 of the *Residential Tenancies Policy Manual*, if an award does not exceed the amount of the security deposit, hearing expenses related to the filing fee will not be awarded. As the landlord's claim has been successful for vacant possession, the filing fee of \$20.00 will not be awarded, however the remaining expenses in the amount of \$13.44 will be awarded.

18. I find that the tenant is responsible in part for the hearing expenses claimed.

Decision

19. The landlord's claim for hearing expenses succeeds in the amount of \$13.44.

Summary of Decision:

20. The tenant shall vacate the premises immediately.

21. The tenant shall pay the landlord \$13.44 for hearing expenses.

22. 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.

23. The landlord will be awarded an Order of Possession.

December 11, 2023

Date

Pamela Pennell
Residential Tenancies Office