

Residential Tenancies Tribunal

Application 2024-0091-NL

Decision 24-0091-00

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 5-March-2024 at 9:16 am.
2. The applicant, [REDACTED] hereinafter referred to as the landlord, was represented at the hearing by [REDACTED] who appeared via 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 them 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 the 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 they have been properly served. The landlord submitted an affidavit (LL#1) with their application stating that the signatory had served the tenant with notice of the hearing, personally, on 13-February-2024.
5. Prior to the hearing I also learned through administrative channels that the tenant had contacted our office via email to oppose the hearing happening via teleconference. They made representations that they had not been served in time. They were advised that the hearing was scheduled for the morning of 5-March-2024 and that, if they did not attend, the hearing could proceed in their absence. Unfortunately, as the tenant did not attend the teleconference, I was unable to hear sworn evidence from them regarding the issue of service or otherwise inquire further to their concerns. With no evidence before me to contradict the duly sworn affidavit of service I accepted it as true.
6. As the tenant was properly served and was aware of the hearing, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.

Issues before the Tribunal

7. Should the landlord's application for an order of vacant possession succeed?

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).
9. Also relevant and referred to in this decision are sections 18 and 34 of the *Act*, reproduced below:

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.

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

10. In order to receive an order for vacant possession, a landlord must provide a valid termination notice. For a termination notice to be valid, it must comply with all relevant sections of the *Act*. In this case the landlord provided a copy of the notice (LL#2) issued to the tenant.
11. This notice was in writing but not in the form prescribed by the minister. However, s. 22(f) of the *Interpretation Act, 1990* reads as follows:

Implied provisions

22. In an Act or regulation

...

(f) where a form is prescribed, deviations from the form not affecting the substance nor calculated to mislead, do not invalidate the form used;

12. Not using the form prescribed by the minister is therefore insufficient to render the notice invalid. LL#2 contains the name and address of the recipient. It identifies the residential premises for which it is given. It identifies that it is a notice under s. 18 for termination without cause. It therefore complies with s. 34 of the *Act*.
13. LL#2 has been signed by the landlord's representative who provided it. It was issued on 1-November-2023, the first day of the relevant rental period, as the rental period in this case runs from the first of the month to the last. It gives a termination date of 29-February-2024, the last day of a rental period. The landlord testified that it was served upon the tenant personally in accordance with s. 35(2)(a) of the *Act*. LL#2 therefore complies with s. 18(9) of the *Act*.
14. The landlord testified that this was a month-to-month lease. LL#2 provides three full months' notice, as required under s. 18(2)(b).
15. The termination notice complies with relevant sections of the *Act* and is therefore valid. The tenancy terminated on 29-February-2024. Insofar as the tenant is still residing at the premises, they are doing so illegally.

Decision

16. The termination notice is valid. An order of vacant possession will be granted.
17. As the landlord's application was successful, they are entitled to have their hearing costs awarded. In this case, the landlord's costs were limited to the \$20 application fee.

Summary of Decision

18. The tenant shall vacate the premises immediately.

19. The tenant shall pay to the landlord \$20 in hearing costs.
20. 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.
21. The landlord is granted an order of possession.

22-March-2024

Date

[Redacted]
Seren Cahill
Residential Tenancies Office