

Residential Tenancies Tribunal

Application 2024-0255-NL

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 9:15 AM on 1 May 2024 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, attended the hearing.
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 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 respondent fails 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 his application stating that the tenant was served notice of hearing via registered mail [REDACTED] on 15 April 2024 (**Exhibit L # 1**). In accordance with the *Residential Tenancies Act, 2018* this is good service. 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 his absence.
5. The details of the claim were presented as a verbal monthly agreement with rent set at \$800.00 which included heat, lights, internet and cable television which is due on the first of each month. There was no security deposit collected on this tenancy and the tenant has resided at [REDACTED] since 2018.
6. The landlord did not amend his application and was not seeking hearing expenses.

Issues before the Tribunal

7. The landlord is seeking:
 - An Order for vacant possession of the rented premises.

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*.
9. Also, relevant and considered in this decision are sections 20 and 34 of the *Act*, as well as Policy 07-001 of the *Residential Tenancies Program*.

Issue 1: Vacant Possession of the Rental Premises

10. The landlord testified that the tenant was aware of the conditions of the rental agreement which included that smoking inside the rental was not permitted and the tenant was required to not impact on the peaceful enjoyment of other tenants of the building. He stated the tenant had been issued multiple verbal notices about noise complaints and smoking inside the rental unit since taking occupancy in the eight-unit apartment building. Along with his application, the landlord also provided a signed written notice issued to the tenant in-person on 2 December 2023 indicating concerns with noise (**Exhibit L # 2**).
11. The landlord provided a signed letter dated 15 December 2023 which he served in-person to the tenant in relation to smoking inside the rental unit (**Exhibit L # 3**).
12. The landlord testified after providing letters to the tenant regarding concerns with his lack of compliance with the rental agreement, he issued the tenant a Landlord's Notice to Terminate Early- Cause under Section 20 of the *Act* by registered mail on 28 February 2024 with a request for the tenant to vacate by 1 April 2024 (**Exhibit L # 4**).
13. The landlord stated the tenant continued to not comply the rental agreement after being issued the Landlord's Notice to Terminate Early. This resulted in the landlord serving the tenant a second Landlord's Notice to Terminate Early- Cause under Section 20 of the *Act* in-person on 25 March 2024 with a request for the tenant to vacate on 30 April 2024 (**Exhibit L # 5**).
14. The landlord offered testimony that as of the date of the hearing (1 May 2024), the tenant remains in Apartment [REDACTED], [REDACTED], [REDACTED], NL.

Analysis

15. The relevant subsections of Section 20 and Section 34 of the *Act, 2018* state:

Notice where material term of agreement contravened

20. (2) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes a material term of a rental agreement, the landlord may give the tenant written notice of the contravention, and if the tenant fails to remedy the contravention within a reasonable time after the notice has been served, the landlord may give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises.

(3) Where the tenant gives a landlord notice under subsection (1) or the landlord gives a tenant notice under subsection (2) that a rental agreement is terminated, the notice shall be given

...

(b) not less than one month before the end of a rental period where the residential premises is

(i) rented from month to month

(4) 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

Requirements for notices

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.

16. Also worth consideration with this decision and hearing is Policy Number 07-001: *General Information Notice of Termination of the Residential Tenancies Program*.

Termination by More than 1 Notice

If a termination notice is already in place and a second notice is issued by the same person whereby the termination date is later than that specified in the first notice, then the person issuing the second notice has thereby indicated that they are intending the tenancy to be extended to the date set out in the second notice.

17. In review of the second termination notice issued on 25 March 2024 under Section 20, this notice meets the requirements under the Act to move out not less than 1 month after

the notice had been served. I find that the termination notice is a valid notice. I accept the landlord's testimony that the tenant did not fulfill his obligations to follow the material term of the rental agreement.

18. I find that the tenant should have vacated the premises by 30 April 2024.

Decision

19. The landlord's claim for vacant possession of the rented premises succeeds.

Summary of Decision

20. The landlord's is entitled to the following:

- An order for vacant possession of the rented premises.
- 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

16 July 2024

Date

Michael Reddy, Adjudicator
Residential Tenancies Office