

Residential Tenancies Tribunal

Application 2024-0270-NL

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:04 a.m. on 3-June-2024.
2. The applicant, [REDACTED] (applicant 1), hereinafter referred to as “the landlord”, attended by teleconference. The applicant, [REDACTED] (applicant 2), hereinafter referred to as “the landlord”, did not attend.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.

Preliminary Matters

4. The landlords submitted an unsworn affidavit with their application stating that they had served the tenant with the notice of hearing personally at the residential premises on 20-April- 2024 (LL#1). The respondent confirmed receipt of the document on that date. In accordance with the *Residential Tenancies Act, 2018* this is good service.
5. There is a written month-to-month rental agreement which commenced on 15-March-2021. Rent is \$900.00 per month, due on the 1st of each month. A security deposit of \$400.00 was paid in March-2021 and is in the landlord’s possession.

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 are the following sections of the *Residential Tenancies Act, 2018*: Section 18: Notice of termination of rental agreement and Section 35: Service of documents.

Issue # 1: Vacant Possession of the Rented Premises

Relevant Submissions

9. The landlords submitted a copy of a termination notice issued to the tenant on 28-February-2024 under Section 18; Notice of termination of rental agreement to vacate the premises on 31-May-2024 (L#2).

Landlord's Position

10. Applicant 1 testified that he gave the tenant a termination notice on 28-February-2024 by sending it electronically via text message to: [REDACTED] and he testified that he also put a copy of the notice in the mailbox attached to the side of the house at the top of the steps leading down to the entrance of the tenant's unit.

Tenant's Position

11. The tenant disputed that he received the termination notice via text and also stated that he does not use the mailbox on the side of the house but rather uses the community mailbox down the street. The tenant stated that he is requesting a proper termination notice served to him before vacating the unit.

Analysis

12. 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.

13. 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. Applicant 1 stated that the termination notice was sent to the tenant

electronically via text to: [REDACTED] on 28-February-2024 and he also stated that he placed a copy of the notice in the mailbox on the side of the house with a portion of the notice visible. The tenant disputed that he received the text message, so I asked him to confirm his cell number and he stated that his cell number is: [REDACTED]. I allowed the landlord to submit a copy of the text message sent on that date (LL#3). I accept the landlord's testimony and verification that the message was sent to the tenant, and I also accept that the notice was posted in a conspicuous place on the tenant's premises, which in accordance with Section 35 of the *Act* is proper service. For those reasons, I find that the respondent did receive the termination notice on 28-February-2024.

14. I find that the tenant should have vacated the premises on 31-May-2024.

Decision

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

Summary of Decision:

16. The termination notice is a valid notice.

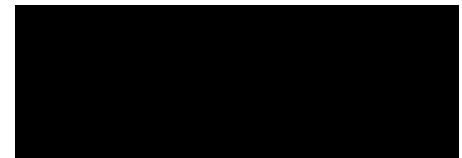
17. The tenant shall vacate the premises immediately.

18. The tenant shall pay to the landlords any costs charged to the landlords by the Office of the High Sheriff should the landlords be required to have the Sheriff enforce the attached Order of Possession.

19. The landlords will be awarded an Order of Possession.

June 18, 2024

Date



Pamela Pennell, Adjudicator
Residential Tenancies Office