

Residential Tenancies Tribunal

Application 2024-0328-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 27-May-2024.
2. The applicant, [REDACTED], hereinafter referred to as the landlord, was represented at the hearing by [REDACTED], who attended 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 they had served the tenant with notice of the hearing via registered mail on 23-April-2024. The tracking number, [REDACTED] was provided. Checking the number showed that the mail was sent on the day stated above and was received. The appropriate supporting documents were also provided as part of LL#1. 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 their absence.

Issues before the Tribunal

5. Should the landlord's application for an order of vacant possession be granted?

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the Act).

7. 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

8. 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.
9. LL#2 is not in the form prescribed by the minister. However, s. 22(f) of the *Interpretation Act, 1990* states that where a form is prescribed, deviations from the form not affecting

the substance nor calculated to mislead, do not invalidate the form used. 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. The deviation from the form does not affect the substance and does not appear calculated to mislead. LL#2 therefore complies with s. 34 of the Act.

10. LL#2 has been signed by the landlord's representative who provided it. It was issued on 11-October-2023, before 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 31-January-2024, the last day of a rental period. The landlord testified it was sent by registered mail, in accordance with s. 35(2)(e) of the Act, as well as being sent by regular mail. LL#2 therefore complies with s. 18(9) of the Act.
11. 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).
12. The termination notice complies with relevant sections of the Act and is therefore valid. The tenancy terminated on 31-January-2024. Insofar as the tenant is still residing at the premises, they are doing so illegally.

Decision

13. The termination notice is valid. An order of vacant possession will be granted.
14. As the landlord was successful in their application, they are entitled to have their costs reimbursed. Their costs in this case consist solely of the \$20 hearing fee.

Summary of Decision

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

10-July-2024

Date


Seren Cahill
Residential Tenancies Office