

Residential Tenancies Tribunal

Application 2024-0532-NL

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 9:42 AM on 1 August 2024.
2. The applicant, the [REDACTED], represented by [REDACTED], hereinafter referred to as “representative1”, [REDACTED], hereinafter referred to as “representative2”, and [REDACTED], hereinafter referred to as “representative3”, attended via teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant”, did not attend the hearing and was not represented.

Preliminary Matters

4. The tenant was personally served the notice of hearing on 8 July 2024 (**Exhibit L # 3**). 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’s representatives submitted an affidavit with their application stating that the tenant was served personally on 8 July 2024. As the tenant was properly served, and as further delay in the proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.
5. In a proceeding under the *Residential Tenancies Act, 2018*, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicant has to establish that his/her account of events are more likely than not to have happened.

Issues before the Tribunal

6. The landlord is seeking an Order of Vacant Possession/Order of Eviction of the rental property. Representative1 testified they were not seeking hearing expenses.

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* (the *Act*).
- 8.. Also relevant and referred to in this decision are Sections 18, 34 and 35 of the *Act*.

Issue 1: Vacant Possession of the Rental Premises

Landlord Position

9. Along with their application, the landlords also provided a copy of the written rental agreement (**Exhibit L # 4**). The details were presented as a verbal monthly agreement with rent set at \$800.00, due on the 1st of each month, which included heat, lights, telephone and wifi. There was a security deposit collected on this tenancy, still in the possession of the landlord, in the amount of \$375.00. The tenant has rented an upstairs bedroom of a 6 bedroom home since 9 February 2023. The landlord served the tenant a termination notice in person on 9 April 2024 with a request to vacate the rental premises on 31 July 2024 (**Exhibit L # 1**) along with a letter addressed to the tenant indicating the situation (**Exhibit L # 2**). To the best of the representative's knowledge and belief, the tenant remains in the rental as of the date of the hearing.
10. On 9 April 2024, the tenant was personally served a notice under Section 18 of the *Residential Tenancies Act, 2018* (**Exhibit L # 1**) with a request to vacate by 31 July 2024. Along with this notice, the tenant had been served a letter explaining the situation on 9 April 2024 (**Exhibit L # 2**).

Analysis

11. On examination of the termination notice submitted into evidence (**Exhibit L # 1**), I find that the notice served on 9 April 2024 had a terminated date of 31 July 2024. As the date of termination identified on the notice is not less than 3 months before the end of the rental period and the date the tenant is required to move out, the termination notice follows the requirements of Section 18 (2)(b).
12. Section 18 (9) and 34 identify the technical requirements of the termination notice.

Section 18 (9)

13. *In addition to the requirements under Section 34, a notice under this section shall*
 - (a) *be signed by the landlord;*
 - (b) *be given not later than the first day of the rental period;*
 - (c) *state the date on which the rental agreement terminates and the tenant is required to vacate the residential premises; and*

(d) be served in accordance with section 35.

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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.*

14. On examination of the termination notice, I find all these criteria have been met. Further, as identified above, the landlord testified that the termination notice was served personally which is a permitted method of service identified under Section 35.
15. According to the reasons identified above, I find that the termination notice issued by landlord to be proper and valid. Therefore, the landlord is entitled to an order for vacant possession of the property, along with an order for all costs associated with certifying the orders or with the Sheriff to enforce such a Possession Order, should the Sheriff be engaged to execute the Possession Order.

Decision

16. The landlords claim for an Order for Vacant Possession succeeds.
17. The landlord is further awarded the cost associated with the certification and enforcement of the Possession Order by the High Sheriff of NL.

Summary of Decision

18. The landlord is entitled to the following:
 - An Order for Vacant Possession of the rented premises
 - The tenant shall also 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.

9 August 2024
Date



Michael Reddy, Adjudicator
Residential Tenancies Office