

Residential Tenancies Tribunal

Application 2024-0642-NL

Michael Reddy
Adjudicator

Introduction

1. Hearing was held on 20-August-2024 at 9:15 am via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as the landlord, attended.
3. The respondent, [REDACTED], hereinafter referred to as the tenant, was not in attendance.

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 and supporting documentation (LL#1) with their application stating that they had served the tenant with the notice of the hearing electronically on 27-July-2024 at approximately 1:18 pm. 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.
5. A written month-to-month rental agreement (LL#2), commenced in November-2023. Rent is established at \$400.00 per month and is due on the first of each month. There was no security deposit collected.
6. The landlords amended their application to remove the original claim for rental arrears and utilities paid and is not seeking hearing expenses.

Issues before the Tribunal

7. The landlord is seeking:
 - Order of Vacant Possession;

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 discussed and referred to in this decision are sections 19(1), 19(4), and 34 of the *Act* as follows.

Notice where failure to pay rent

19. (1) *Notwithstanding subsection 18(2) and paragraph 18(3)(b),*

(b) *where the residential premises is*
i. *rented from month to month,*
ii. *rented for a fixed term, or*
iii. *a site for a mobile home, and*

the amount of rent payable by a tenant is overdue for 5 days or more, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 10 days after the notice is served on the tenant.

.....
(4) *In addition to the requirements under section 34, a notice under this section shall*

- a. *be signed by the landlord;*
- b. *state the date on which the rental agreement terminates and the tenant is required to vacate the residential premises; and*
- c. *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.*

Issue 1: Vacant Possession

Landlord's Position:

10. The landlords testified that she issued a valid termination notice on 11-July-2024, by posting the notice on the door of the premises, as the tenant had stopped responding to her text and electronic messages. She notes that the tenant may no longer be residing at the residential premises at the time of the hearing; however, the termination date has lapsed, and she feels she is entitled to vacant possession.

Analysis

11. To receive an order for vacant possession, a landlord must have issued a valid termination notice. To be valid, a termination notice must comply with all relevant sections of the Act.
12. The landlord submitted a copy of the termination notice (LL#3) issued on 11-July-2024. It is in writing in the form prescribed by the minister. It contains the name and address of the tenant. It identifies the residential premises it regards. It identifies itself as being issued under s. 19 of the Act. It therefore complies with s. 34.
13. LL#3 was signed by the landlord. It specifies the date on which the tenancy is to terminate, and the tenant is to vacate the premises. It was served on the tenant in accordance with s. 35(2)(c) of the Act. It therefore complies with s. 19(4) of the Act.
14. Testimony confirmed that this is a month-to-month agreement with rent due on the 1st of each month. A copy of the rental ledger was also provided (LL#4). The tenant was in rent arrears more than 5-days when the termination notice was served and continued to be in rent arrears on the move out date of 22-July-2024, which is not less than 10-days after it was served. It therefore complies with s.19(1)(b) of the Act.
15. The termination notice complies with all relevant sections of the Act and is therefore valid.

Decision

16. The valid termination notice gave a move out date of 22-July-2024. The tenancy agreement ended on that date. Insofar as the tenant still has possession of the premises, they do so illegally. The landlords' application for an order of vacant possession succeeds

Summary of Decision

17. The tenant shall vacate the premises immediately.
18. 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.
19. The landlord is granted an order of possession.

19-September-2024

Date

Michael Reddy, Adjudicator
Residential Tenancies Office