

Residential Tenancies Tribunal

Application 2024-0727-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 27-August-2024 at 9:03 am.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as the landlords, attended via teleconference.
3. The respondent, [REDACTED], hereinafter referred to as the tenant, also attended via teleconference.

Preliminary Matters

4. The respondent acknowledged they received notice of this hearing more than ten days before the hearing date, but said the notice was blurry and he couldn't read it. The landlord provided an affidavit of service (LL#1) stating that they served the tenant electronically on 14-August-2024 at 2:22 pm both by text message and by email. Proof of the email was provided (LL#2), and the landlord testified that the email address had been provided by the tenant and she had received emails from him at that address in the past. The tenant testified that he was currently unable to access that address.
5. I was satisfied that the tenant was properly served and proceeded with the hearing accordingly.

Issues before the Tribunal

6. Should the landlord's claim for vacant possession be granted?

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 considered 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),

(a) where the residential premises is rented from week to week and the amount of rent payable by a tenant is overdue for 3 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 3 days after the notice is served on the tenant; and

(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

9. The landlord submitted that they had issued a valid termination notice, that the termination date had elapsed, and that they are therefore entitled to vacant possession of the rental premises.

Tenant's Position

10. The tenant admitted he is in arrears in rent, he says this is a result of him becoming ill and being hospitalized, and then decided not to pay after the landlord first issued a notice of termination.

Analysis

11. In order to receive an order of 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 a termination notice (LL#3). It is in writing in the form prescribed by the minister. It contains the name and address of the recipient. It is in writing in the form prescribed by the minister. It contains the names and address of the recipient. 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 the date on which the tenancy is to terminate and the tenant is to vacate the premises. It was served on the tenant electronically in accordance with s. 35(2)(f) of the *Act*. It therefore complies with s. 19(4) of the *Act*.
14. The landlords testify and I accept that this is a month-to-month rental agreement with rent due on the 1st of each month. LL#3 is dated 1-August-2024 and was issued on the same day. According to the facts as agreed on by the parties, rent was overdue by more than five days. It gives a move out day of 16-August-2024, which is not less than 10 days after it was served. It therefore complies with s. 19(1)(b) of the *Act*.
15. LL#3 complies with all relevant sections of the *Act* and is therefore valid.

Decision

16. The valid termination notice gave a move out date of 16-August-2024. The tenancy agreement ended on that date. Insofar as the tenant still has possession of the premises, he does so illegally. The landlords' application for an order of vacant possession succeeds.
17. The landlord was successful in their claim and so are entitled to have their reasonable hearing expenses covered. In this case, the landlords seek only the \$20 application fee.

Summary of Decision

18. The tenant shall vacate the premises immediately.

19. 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.
20. The landlord is granted an order of possession.
21. The tenant shall pay to the landlord \$20 of hearing expenses.

4-September-2024

Date


Seren Cahill
Residential Tenancies Office