

Residential Tenancies Tribunal

Decision 20-0021-02

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:04 am on 16 September 2020 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, participated in the hearing.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant”, did not participate.

Issues before the Tribunal

4. The landlord is seeking an order for vacant possession of the rented premises.

Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
6. Also relevant and considered in this case is section 18 of the *Residential Tenancies Act, 2018*, rule 29 of the *Rules of the Supreme Court, 1986* and William & Rhodes Canadian Law of Landlord and Tenant (Carswell: Toronto, 1988).

Preliminary Matters

7. The tenant was not present or represented at the hearing and there was no telephone number where he could be reached. 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 he has been properly served. The landlord submitted an affidavit with his application stating that the tenant was personally served with notice of this hearing on 14 August 2020 and the tenant has had 32 days to provide a response. 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 his absence.

Issue 1: Vacant Possession of the Rented Premises

Relevant Submissions

8. The landlord stated that she had entered into a monthly rental agreement with the tenant on 01 October 2018. The current rent is set at \$700.00 per month and that rent is due on the first day of each month.
9. The landlord stated that on 14 April 2020 she posted a termination notice to the tenant's door and a copy of that notice was submitted with her application. That notice was issued under section 18 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 01 August 2020.
10. The landlord stated that the tenant has not vacated as required and she is seeking an order for vacant possession of the rented premises.

Analysis

11. The relevant subsections of section 18 of the *Residential Tenancies Act, 2018* state:

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.


12. According to the landlord's termination notice, the tenancy is to terminate on 01 August 2020 and the tenant is required to vacate on that date. But section 18.(9)(c), quoted above, states that the termination notice must specify a termination date which is the last day of the rental period.
13. The landlord stated that the tenant's rent was due on the first day of each month and therefore the last day of the monthly rental periods fell on the last day of each month. The landlord ought to have indicated in that notice that the tenancy is to terminate on 31 July 2020, not 01 August 2020.
14. In William & Rhodes Canadian Law of Landlord and Tenant, when discussing termination notices, the authors point out that "an inaccuracy in certain matters such as the date of termination cannot be ignored even if the wrong date is inserted by a slip". They further point out that "A termination notice giving an incorrect date of termination is bad, even though both parties understood the date to which it was intended to refer" (12-109).
15. As the landlord had specified an incorrect termination date, and based on the authorities I quoted in the previous paragraph, I have to likewise conclude that the landlord's termination notice is "bad", or invalid.

Decision

16. The termination notice issued to the tenant on 14 April 2020 is not a valid notice.
17. The landlord's claim for an order for vacant possession of the rental unit does not succeed.

17 September 2020

Date


John R. Cook
Residential Tenancies Tribunal