

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0271-05

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was call at 1:15 pm on August 19, 2021, via teleconference.
2. The applicant, [REDACTED] hereinafter referred to as “the landlord” attended by teleconference.
3. The respondents: [REDACTED] hereinafter referred to as “the tenants” did not attend.

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*: jurisdiction of the Director of Residential Tenancies.
6. Also relevant and considered in this case is section 19: Notice where failure to pay rent, as well as, section 34: requirements for notices, of the *Residential Tenancies Act, 2018*.

Preliminary Matters

7. The tenants were not present or represented at the hearing and there was no telephone number provided to reach them 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 with his application (█ #01) stating that he had served the tenant with notice of the hearing in person on July 16, 2021. 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.
8. The landlord had served the tenants with a previous eviction (█ #02) notice on May 18, 2021 for a termination date of June 01, 2021. The landlord agreed that this notice did not meet the requirement of the act and will not be considered.

Issue: Vacant Possession of the Rental Premises

Relevant Submissions

9. The landlord testified that he has had difficulty with receiving rent from the tenants this past year.
10. The landlord is in a verbal, month-to-month agreement with the tenants for \$800.00 a month, due on the first of the month. The tenants are long term tenants who have been living at the property in question for about 12 years. He doesn't believe that there has been a damage deposit paid.
11. The tenants have been in rental arrears throughout the year. They were fully paid up by the end of May. In June they only paid \$150.00 of their rent. The \$650.00 balance of rent for June is still owing.
12. The landlord served them with a notice to terminate early (█ #03) on June 18, 2021. He delivered it to them in person. The termination is dated for June 31, 2021.

Analysis

13. Section 19 states:

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)

(iii) 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.

14. Section 19 of the Act allows a landlord to terminate a rental agreement, after the rent is overdue for 5 days. The tenant is required to vacate on a specified date not less than 10 days after the notice is served.

15. This notice meets all the requirements set out in this section of the Act, except that it specifies a termination date of 31 June 2021—a nonexistent date.

16. However, I find that this “slip of the pen” does not invalidate the notice, it was the landlord’s intent to state the last day of the month: June 30th. There have been previous cases in Canada where the courts have come to similar conclusions.

17. For instance, in Residential Tenancies in Ontario, it is written:
In Wolch v. Mallia the notice of termination was for November 31st, a nonexistent date. The Divisional Court found that this “mere slip” did not offend the principle in the Re Bianchi and Aguanno case holding that the clear intention of the landlord was to terminate the tenancy on the last day of November.

Decision

18. The landlord’s claim for an order for vacant possession of the rented premises succeeds.

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.

September 09, 2021 _____
Date

