

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0289-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:04 PM on 06 October 2021 via teleconference.
2. The applicant, [REDACTED] was represented at the hearing by [REDACTED], hereinafter referred to as “the landlord”.
3. The respondent, [REDACTED] hereinafter referred to as “the tenant”, also participated.

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 sections 18, 34 and 35 of the *Residential Tenancies Act, 2018*.

Preliminary Issues

7. The tenant called the following witness:
 - [REDACTED] – long-time friend of tenant

Issue 1: Vacant Possession of Rented Premises

Relevant Submissions

The Landlord's Position

8. The landlord stated that she had entered into a monthly rental agreement with the tenant on 01 August 2005. The current rent is set at \$845.00 and she stated that the tenant had paid a security deposit of \$255.00 when he moved into the unit.
9. With her application, the landlord submitted a copy of a termination notice (█ #1) which she stated "would have been delivered" to the tenant, by the resident manager, on 09 June 2021. She stated that she "imagined" that if the notice was not hand-delivered, then it would have been slipped under the tenant's door.
10. The landlord also pointed out that that notice was part of the application package which she had sent to the tenant in July 2021.
11. That notice was issued under section 18 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 30 September 2021.
12. The tenant has not moved out, and the landlord is seeking an order for vacant possession of the rented premises.

The Tenant's Position

13. The tenant stated that the termination notice was not delivered to him by the resident manager and he claimed that the first time he saw the notice was when he received the landlord's application on 21 July 2021.
14. The tenant's witness, █ corroborated the tenant's claim. She stated that she is with the tenant every day and that no termination notice was slipped under the tenant's door. She also reiterated his claim that he only received the termination notice with the application package on 21 July 2021.

Analysis

15. The relevant subsections of s.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

16. Section 18 of the *Act* allows a landlord to terminate a rental agreement, on 3 month's notice, without having to provide reasons to either the tenant or this Board. If the notice was delivered to the tenant on 09 June 2021, as the landlord claimed, then as it meets all the requirements under this section of the *Act*, it would be valid.
17. However, I was not persuaded that the notice was delivered to the tenant on 09 June 2021. Both the tenant and his witness denied the landlord's claim that that notice was delivered to him or that it was slipped under his door, and the landlord presented no evidence to corroborate her claim that it was served on him by the resident manager. The resident manager was not called as a witness and he did not provide an affidavit of service. The landlord herself did not witness the delivery and spoke only of what she "imagined" the resident manager "would have done" with the notice.
18. As the landlord has the burden of proving that the notice was delivered in a timely fashion and in accordance with section 35 of the *Act*, I have to conclude that she has failed to meet that burden.
19. With respect to the application package that was delivered to the tenant on 21 July 2021, although that package does contain a copy of the notice, it was, at that point, outside the 3-month notice period set out in section 18. In July 2021, the earliest the landlord could terminate the rental agreement would have been 31 October 2021. And in any case, a termination notice which is attached to an application is not considered the serving of that notice. The notice has to be served before the application is filed, and it only attached to the application as a piece of evidence and to alert the respondent what the application concerns.

Decision

20. The landlord's claim for an order for vacant possession of the rented premises does not succeed.

14 October 2021

Date

