

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0373-05

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:41 a.m. on October 12, 2021.
2. The applicant, [REDACTED] represented by [REDACTED] hereinafter referred to as "landlord1" and "landlord2" attended by teleconference.
3. The respondent, [REDACTED] hereinafter referred to as "the tenant" did not attend.

Preliminary Matters

4. The landlords provided an Affidavit of Service ([REDACTED] #01) swearing that the tenant was served notice of the hearing by prepaid registered mail ([REDACTED] #02) mailed on September 22, 2021. The tenant was contacted by myself and attended the start of the hearing. Once the affirmations began she promptly declared that she had no knowledge of this and would not be participating, she was going to speak with a lawyer, and she then hung up from the teleconference.
5. The tenant was not present or represented at 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 he has been properly served. The landlord's affidavit with her application stating that she had served the tenant with notice of the hearing, by prepaid registered mail on September 22, 2021 is considered delivered after 5 days. Although the tenant did not collect these documents it is still considered good service. 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 her absence.

Issues before the Tribunal

6. The landlord is seeking:
 - Vacant Possession
 - Hearing Expenses reimbursed

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*.
8. Also relevant and considered in the case is section 18 of the *Residential Tenancies Act 2018*: notice of termination of rental agreement, section 34: requirement for notices, section 35: Service of documents.

Issue 1: Vacant Possession of the Rental Premises

Relevant Submissions

9. The landlord and tenant entered into a written lease on August 28, 2020, for a term from September 01, 2020 – August 31, 2021. The rent is \$910.00 a month due on the first day of each month. There was a security deposit of \$452.50 paid on August 4, 2020; the landlord is still in possession of the security deposit.
10. The landlord submitted the Landlord's Notice to Terminate – Standard under the authority of section 18, this was served on the tenant. The notice is signed on May 27, 2021 with a termination date of July 31, 2021.
11. The landlord said it is common practice for the caretaker to serve the notice on the day it is signed, in person, to the tenant. She was unable to find documentation to verify that this happened.

Analysis

12. Section 18.2 of the *Residential Tenancies Act: 2018*,

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.

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13. The notice served to the tenant was dated for May 27, 2021 with a termination date of July 31, 2021, as shown in paragraph 10. This notice does not provide 3 months notice before the end of a rental period and therefore doesn't meet the requirement of the *Act*.
14. A notice should also be served with the requirements of section 35:

Service of documents

35. (2) A notice or other document under this Act other than an application under section 42 shall be served by a landlord on a tenant by

- (a) giving it personally to the tenant;
 - (b) giving it to a person 16 years of age or older who apparently lives with the tenant;
 - (c) posting it in a conspicuous place on the tenant's residential premises;
 - (d) placing it in the tenant's mailbox or under a door in the tenant's residential premises;
 - (e) sending it to the tenant by prepaid registered mail or prepaid express post at an address
 - (i) provided by the tenant, or
 - (ii) where the tenant carries on business;
 - (f) sending it electronically where
 - (i) it is provided in the same or substantially the same form as the written notice or document,
 - (ii) the tenant has provided an electronic address for receipt of documents, and
 - (iii) it is sent to that electronic address; or
 - (g) sending it to the tenant by courier service at an address set out in paragraph (e).
15. The staff member who served the document no longer works for the company and this left the landlord without definitive proof of how or when the document was served, leaving to question whether the document was served according to the terms of the *Act*.

Decision

16. The landlords claim for vacant possession fails because the termination notice dated May 27, 2021 with a termination date of July 31, 2021 is not a valid termination notice.

Issue 2: Hearing Expenses reimbursed

Relevant Submissions

17. The landlord submitted the fee for filing this claim (■■■■#04), however, as the claim is unsuccessful the fee is not the responsibility of the tenant.

Summary of Decision

18. The termination notice dated May 27, 2021 with a termination date of July 31, 2021 is not a valid termination notice.

October 19, 2021

Date

