

## Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0379-05

Jacqueline Williams  
Adjudicator

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### Introduction

1. Hearing was called at 9:45 a.m. on 02-November-2021.
2. The applicant, [REDACTED] represented by [REDACTED] hereinafter referred to as “the landlord” attended by teleconference.
3. The respondent, [REDACTED] hereinafter referred to as “the tenant” did not attend.

### Preliminary Matters

4. The tenant was not present or represented at the hearing and I was unable to reach him by telephone 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 he has been properly served. The landlord submitted an affidavit ([REDACTED] #01) with their application stating that they had served the tenant with notice of the hearing, by prepaid registered mail and included the tracking number. The package was sent on 24-September-2021, the tracking number indicates that the package was not delivered and was returned to the sender. It is our policy that the package is considered delivered after 5 days. 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.

### Issues before the Tribunal

5. The landlord is seeking:
  - Premises vacated.
  - Hearing expenses reimbursed

## Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
7. Also relevant and considered in this case are sections 18: notice of termination of rental agreement, of the *Residential Tenancies Act, 2018*.

## Issue 1: Vacant Possession of the Rental Premises

### Relevant Submissions

8. The landlord stated that they entered a rental agreement with the tenant in 2018. On March 28, 2018 the tenant moved in, they entered a written monthly agreement for \$825.00 a month, pay own utilities. The rental period is from the 1<sup>st</sup> to the last day of each month. Rent is due on the first of each month. The tenant paid a security deposit of \$375.00 on April 01, 2018, and the landlord is still in possession of the deposit.
9. The landlord submitted a Notice to Terminate-Standard under section 18 of the Residential Tenancies Act (█ #03). The notice is dated for July 28, 2021 with a termination date of November 01, 2021. The landlord stated that the notice was served in person by the Resident Manager on the day signed, July 28, 2021.

## Analysis

10. Section 18 of the *Residential Tenancies Act, 2018*, states:

### **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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11. A landlord can give their tenant 3 months' notice without reason or cause to terminate a tenancy.
12. The notice is for not less than 3 months before the **end** of a rental period.
13. The notice served to the tenant is dated for November 01, 2021, which is the beginning of the rental period and therefore invalid.

## Decision

14. The landlord's claim for vacant possession fails.

## Issue 2: Hearing Expenses reimbursed

15. The landlord submitted their hearing expenses (■■■■#04), as the claim is unsuccessful, the hearing expenses are not the responsibility of the tenant.

## Summary of Decision

16. The termination notice dated July 28, 2021 with a termination date of November 01, 2021, is not a valid notice.

November 4, 2021 \_\_\_\_\_

Date

