

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0498-05

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:16 a.m. on 01-February-2022.
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 her 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 she has been properly served. The landlord submitted an affidavit (LL#01) with her application stating that they had served the tenant with notice of the hearing, by registered mail, she also provided the tracking number (LL#02). The package was mailed on 15-November-2021, it is the policy of this board to consider registered mail 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 her absence.

Issues before the Tribunal

5. The landlord is seeking vacant possession of the rented premises.

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 decision is the following section of the *Residential Tenancies Act, 2018*: Section 18: Notice of termination of rental agreement.

Issue 1: Vacant Possession of the Rental Premises

Relevant Submissions

8. The landlord said that the tenant moved into her apartment on 01-August-2004 and she signed a term lease until 31-July-2005. Since that time she is in a monthly lease. In 2006 the landlord took over the building that this apartment is in; at that time the tenant's rent was \$560.00 a month. Currently, the rent is \$855.00. Rent is from the 1st to the last day of the month, rent is due on the 1st day of each month. There was no security deposit paid.
9. The landlord submitted a termination notice (LL#03). The notice says that they are terminating the rental agreement on her apartment in accordance with Section 18.2 (b) of the Residential Tenancies Act, 2018. The notice is signed and dated for 28-October-2022 with a termination date of 31-January-2022. The landlord assured this board that the date of 28-October-2022 was a slip of the pen and that the notice was indeed signed and delivered on 28-October-2021.
10. The landlord said, that the Resident Manager reported that, the notice was given to the tenant's daughter, who then passed it to her mother, who was just inside the apartment, as seen by the Resident Manager. The notice was served on 28-October-2021.
11. The tenant is still living at the apartment.
12. The landlord is seeking vacant possession of the apartment.

Analysis

13. Section 18.2 (b) 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

(b) not less than 3 months before the end of a rental period where the residential premises is rented from month to month; and

14. The landlord's notice does give the tenant the full 3 month period required for a notice under Section 18. The landlord is not required to provide a reason for the termination.
15. This notice meets all the requirements set out in this section of the Act, except that it specifies a signing date of 28-October-2022; a day that has not yet arrived. However, I find that this "slip of the pen" does not invalidate the notice, and there have been previous cases in Canada where the courts have come to similar conclusions. 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. The landlord, in this case, assured this board that the date the termination notice was signed was 28-October-2021 and this was a slip of the pen.

16. The notice served to the tenant meets the requirements of the *Act* and the tenant should have moved on 31-January-2022.

Summary of Decision

17. The landlord’s claim for an order for vacant possession of the rental premises succeeds.
18. The tenant is to vacate the property immediately.
19. The tenant shall pay to the landlord any costs charged to the landlord, by the Office of the High Sherriff, should the landlord be required to have the Sheriff enforce the attached Order of Possession

February 8, 2022

Date

