

Residential Tenancies Tribunal

Application 2024-0540-NL & 2024-0603-NL

Michael Reddy
Adjudicator

Introduction

1. Hearing was held on 13-August-2024 at 9:04 am via teleconference.
2. The applicant, [REDACTED], represented by [REDACTED], hereinafter referred to as the landlord, was in attendance.
3. The respondent and counter-applicant, [REDACTED], hereinafter referred to as the tenant, was in attendance.

Preliminary Matters

4. The landlord submitted two affidavit of service and supporting documents stating that the tenant had been service notice of hearing and rescheduled hearing, respectively, via registered mail. The landlord acknowledged receiving the notice of this hearing documents from the tenant for the counterclaim, but not the notice of rescheduled hearing. The landlord opted to waive service. This hearing will proceed and adjudicate both the claim and counterclaim.
5. There is a written month-to-month rental agreement which commenced on 1-May-2021. Rent is \$938.00 per month due on the first of each month. A security deposit of \$656.25 was paid in trust on 1-May-2021 and remains in the landlord's possession.

Issues before the Tribunal

6. The landlord is seeking:
 - Order for vacant possession; and
 - Hearing expenses.
7. The tenant is seeking:
 - To determine the validity of a termination notice; and
 - Hearing expenses.

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Act*.
9. Also considered and referred to in this decision are sections 18(2), 18(9), and s. 34 of the *Act*, reproduced below:

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.

Requirements for notices

34. A notice under this Act shall

- (a) be in writing in the form prescribed by the minister;
- (b) contain the name and address of the recipient;
- (c) identify the residential premises for which the notice is given; and
- (d) state the section of this Act under which the notice is given.

Issue 1: Vacant Possession / Validity of Termination Notice

Landlord's Position

10. The landlord submits that they provided a valid termination notice (LL#2), that the termination date contained has passed, that the tenant has not vacated the premises, and that they are therefore entitled to receive an order for vacant possession.

Tenant's Position

11. The tenant testified that she believes the termination notice to be invalid as it was addressed incorrectly. She testified that while the street address was correct, it contained the incorrect apartment number. Further, she testified that the mailing address on the registered mail envelope was also incorrect. Nonetheless, she confirmed that she did eventually receive the termination notice.

Analysis

12. In order to receive an order for vacant possession, a landlord must first serve a valid termination notice. To be valid, a termination notice must comply with all relevant sections of the Act.
13. The residential tenancy agreement is a month-to-month. LL#2 was issued on 4-April-2024 and gives a move out date of 31-July-2024. LL#2 provides 3 full months' notice as required by s. 18(2)(b) of the Act.
14. LL#2 was signed by a representative of the landlord who provided it. It was given the day before the first day of the relevant rental period. It states the date on which the residential tenancy agreement is to terminate, and that date is the last day of a rental period. It was served on the tenant via registered mail in accordance with s. 35(2)(e) of the Act. LL#1 therefore complies with s. 18(9) of the Act.
15. LL#2 is in writing, but not in the form prescribed by the minister, contrary to s. 34(a) of the Act, above. However, s. 22(f) of the *Interpretation Act, RSNL 1990* states that where a form is prescribed, deviations from the form not affecting the substance nor calculated to mislead, do not invalidate the form used. In this regard, it complies with s.34 of the Act. LL#2 also states the section of the Act which the notice was given, and contains the name and address of the recipient. However, the address contained is in question.
16. The tenant maintains that the address is invalid as it lists apartment # 1105, as opposed to her actual apartment #105. The landlord testified that the extra '1' was to denote building 1 of a 3-building apartment complex; however, confirmed that each of these buildings have a different street address.
17. As per William & Rhodes Canadian Law of Landlord and Tenant, the general principles of termination notices include the fact that they are documents of a technical nature and must be unambiguous. Inaccuracies in certain matters cannot be ignored. While I accept the landlords testimony regarding the intent to denote building '1', the termination notice

and registered mail envelope states 1105 – 293 Freshwater Road, which is an incorrect address. This is a material mistake which invalidates the notice.

18. Considering the totality of the evidence I find on a balance of probabilities that the termination notice is not valid.

Decision

19. The landlords claim for vacant possession fails.

Issue 2: Hearing Expenses

20. Both the landlord and the tenant paid \$20.00 for their respective applications and provided receipts (LL# 3; TT #1), and both are seeking reimbursement.
21. Section 12-1 of the *Residential Tenancies Policy* states that in general, claimable costs may include the filing fee. As the tenant's claim has been successful, the landlord shall pay the hearing expenses.

Decision

22. The tenant's claim for hearing expenses succeeds in the amount of \$20.00.

Summary of Decision

23. The termination notice issued by the landlord dated 4-April-2024 is not a valid notice.
24. The landlord shall pay to the tenant \$20.00 in hearing expenses.

04-October-2024 _____

Date



Michael Reddy, Adjudicator
Residential Tenancies Office