

Residential Tenancies Tribunal

Application 2024-0806-NL

Michael Reddy
Adjudicator

Introduction

1. The hearing was held on 10 October 2024 at 1:46 PM.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as the landlords, attended via teleconference.
3. The respondent, [REDACTED], hereinafter referred to as the tenant, attended via teleconference.

Preliminary Matters

4. The landlords supplied an affidavit (L#1) and proof of service with their application stating the tenant was served electronically [REDACTED] on 14 September 2024 at 7:43 AM. The tenant did not dispute service. In accordance with the *Residential Tenancies Act, 2018*, this is good service.
5. The details of the claim were presented as a monthly rental agreement for a bedsitting room, beginning on 1 February 2024, with rent set at \$650.00 due on the 1st of each month. There was a security deposit collected of \$487.50 on 25 January 2024. The tenant did not move in. The disposition of the security deposit was determined in 2024-0592-NL in favor of the tenant; however, at the date of hearing continued to remain in the possession of the landlords.
6. The landlords amended their claim to include hearing expenses.
7. In a proceeding under the *Residential Tenancies Act, 2018*, the applicants have the burden of proof. This means the applicant has the responsibility to prove that the outcomes they are requesting should be granted. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicant has to establish that their account of events are more likely than not to have happened.

Issues before the Tribunal

8. The landlords are seeking:

- validity of termination notice,
- rental arrears of \$650.00, and
- hearing expenses of \$20.00.

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).
10. Also considered and referred to in this decision are Sections 2, 9, and 34 of the *Act*.

Issue 1: Validity of Notice

Landlords Position

11. The landlord's position is that the tenant failed to provide them with a proper termination notice after entering into a rental agreement, effective 1 February 2024. They testified that the tenant had contacted them to inquire about the rental premises in January 2024, that the tenant had a friend view the premises beforehand as he was out of the province and paid the security deposit on 25 January 2024. Following this, they sent him a receipt and an electronic copy of a written monthly rental agreement signed by the landlord (L#2), which the tenant informed them he would sign on his return and move in. The landlords testified that parking would be included (as the tenant requested), but that it had not been noted on the initial agreement. The landlords testified that there was another occupant in the bedsitting room at the time who was scheduled to vacate at the end of January 2024. However, due to some issues with this occupant, he did not vacate until mid-day on 1 February 2024.
12. The landlords testified the tenant was informed he could move into the rental premises on 1 February 2024, and around mid-day (approximately 1:00pm) was advised that the former tenant had moved out, the room was cleaned, and the previous tenant left the keys to the premises in the mailbox for the tenant. The landlords stated the tenant informed them by text message on 1 February 2024 at 1:19pm he would be cancelling the agreement, and he would not be moving into the rental premises.

Tenant Position

13. The tenant's position is that he did not enter into a rental agreement. The tenant did not dispute he initially wished to occupy the rental premises, that he sent the security deposit to the landlords on 25 January 2024, and the landlords had sent him a written monthly rental agreement. However, he stated that he never signed the rental agreement as he wished to first view the rental premises to ensure there was parking included, as this was a requirement for him. He stated he made multiple attempts to view the rental premises (January 26, 27, 28 and 31, 2024) but a viewing was not available as the previous occupant was still in the bedsitting room.

14. The tenant testified on the day he was due to move in (1 February 2024), he attended the rental premises at 9 AM, but the room was not ready. The prior tenant was still occupying the room and in the middle of packing, the room was not clean and parking was not available as the driveway was not cleared of snow. The tenant testified that for these reasons he was no longer comfortable with the whole agreement. He decided he could not rent without parking and at 1:19 PM on 1 February 2024 he sent the landlords a text advising that he would have to cancel.

Analysis

15. Regarding the validity of termination notice, it first must be determined whether or not there was a rental agreement in place and the existence of a landlord and tenant relationship.

Section 2 – Definitions

2.(h) “rental agreement” means a written, oral or implied agreement between a landlord and a tenant in which the tenant is granted the right to use or occupy a residential premises on the condition that rent is paid.

Section 9 – Landlord and tenant relationship

9. (1) A relationship of landlord and tenant takes effect when the tenant is entitled to use or occupy the residential premises whether or not the tenant actually uses or occupies it.

16. In this instance, both parties agree that discussions began in January 2024 to enter into a rental arrangement, terms and conditions were discussed and agreed upon, a security deposit was paid, a rental agreement was provided by the landlords for the tenant's signature and a move in date of 1 February 2024 was established. The landlords take the position that there was a rental agreement in place, and while circumstances were not ideal on 1 February 2024, the premises was made available for the tenant's occupancy by mid-day. The tenant takes the position that the rental agreement was not signed, and the material terms of the agreement were not met.

17. I accept the testimony of both parties; however, rental agreements do not necessarily require the signatories of both parties as they can also be verbal and implied. Taking testimony and evidence into account in its totality, on the balance of probabilities, I determine that there was an implied/verbal rental agreement established between the parties. While I understand the tenant was unsatisfied, this does not cancel an established rental agreement; other remedies, as per section 20 of the *Act* exist for circumstances involving alleged contraventions to material terms of an agreement.

18. As there was a rental agreement in place, the validity of the termination notice must also be determined. To be valid, a termination notice must comply with all requirements under the *Act*. Regardless of whether a termination notice is issued by one party to another with or without cause, section 34 of the *Act* states the following:

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.

19. In this instance, the tenant did not provide a notice meeting any of the stipulations above but sent a text cancelling the agreement. As this fails to meet any of the section 34 requirements, I determine that no valid notice was provided as per the *Act*.

Decision

20. No valid termination notice was issued by the tenant.

Issue 2: Rental Arrears

Landlord Position

21. The landlords testified the rental agreement (L#2) was in place for the tenant to take occupancy by 1 February 2024 and on that same date, the tenant informed the landlords he would not be taking occupancy of the rental premises. The landlords are seeking rental arrears of \$650.00 for the month of February 2024 as they were not provided a valid termination notice. They stated the premises was rented by another tenant as of 1 March 2024.

Tenant Position

22. The tenant disputed the landlords claim for rent, arguing that he did not enter into a rental agreement as it was not signed, and he cancelled and informed the landlords he would not be taking occupancy of the rental premises on 1 February 2024.

Analysis

23. As per paragraphs 17 to 19 above, it has been determined that the parties entered a landlord-tenant relationship, and the tenant was granted the right to use or occupy the residential premises. Rent is required to be paid under a rental agreement by a tenant, whether or not the tenant actually uses or occupies the rental premises. As there was no valid termination notice, I find the tenant is responsible for rent for the month of February 2024.

Decision

24. The landlords claim of rent succeeds in the amount of \$650.00.

Issue 3: Hearing Expense

Analysis

25. Section 12-001 of the *Residential Tenancies Policy* states that in general, claimable costs may include the filing fee. The landlords paid an application fee of \$20.00 to *Residential Tenancies* and supplied a copy of the receipt (L#3). As the landlord's claim succeeds, the tenant shall pay the hearing expense.

Decision

26. The landlords claim for hearing expenses succeeds in the amount of \$20.00.

Summary of Decision

27. No valid termination notice was issued by the tenant.

28. The landlords are entitled to a payment of \$670.00 as follows:

- Rental Arrears for February 2024.....\$650.00
- Hearing Expenses.....\$20.00
- Total.....\$670.00

5 March 2025

Date

Michael Reddy, Adjudicator
Residential Tenancies Office