

Residential Tenancies Tribunal

Application 2024-0844-NL

Oksana Tkachuk
Adjudicator

Introduction

1. Hearing was called at 9:01 a.m. on 22-October-2024.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant”, attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the landlord”, attended by teleconference.

Preliminary Matters

4. The tenant submitted an affidavit with his application stating that he had served the landlord with the notice of hearing electronically by email to; [REDACTED] on 24-September-2024 (TT#1). The landlord confirmed receiving the notice of the hearing on that date. In accordance with the *Residential Tenancies Act, 2018* this is good service, the hearing proceeded.
5. There is a verbal month-to-month rental agreement which commenced on 11-August-2021. Rent is \$1180.00 per month and due on the first of each month. A security deposit was not paid.

Issues before the Tribunal

6. The tenant is seeking:
 - Validity of termination notice.

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

19: Notice where failure to pay rent and Section 7-1 of the *Residential Tenancies Policy Manual*: Notice of Termination.

Issue # 1: Validity of termination notice

Tenant's Position

9. The tenant testified that the landlord did not provide him a proper termination notice to vacate the premises. The tenant submitted three termination notices and screenshots of text messages between him and the landlord to support his claim. The first notice was dated 2-June-2024 to vacate on 21-September (TT#2), however the tenant stated that he received it on 30-August-2024. The second termination notice was issued 27-September-2024 to vacate the property on 31-December-2024 (TT#3). Most recently, on 6-October-2024, the tenant received a final termination notice under the Section 19 of the Act due to failure to pay rent to vacate on 18-October-2024 (TT#4).

Landlord's position

10. The landlord stated that there was friendly informal relationship between him and tenant throughout the tenancy. The landlord testified that on 1-June he informed the tenant that they are planning to sell the house and asked the tenant to vacate the property in September. The landlord stated that after several property viewings in July, he informed the tenant that the property was going to be sold and asked him to vacate the property as they previously agreed. The landlord confirmed that the Standard termination notice issued on 2-June to vacate on 21-September was served on 30-August, however the tenant agreed to vacate by 21-September. On 4-September the landlord received rent payment for the full month of September and returned the portion covering the period after the 21-September, as they agreed that the tenant would leave by 21-September. As the tenant did not leave on agreed date, the landlord issued a Standard termination notice on 27-September to vacate on 31-December. The landlord stated that as October rent was not paid in time, the landlord issued a termination notice on 6-October to vacate on 18-October under the Section 19 of the Act due to the failure to pay rent.

Analysis

11. According to the Section 7-1 of *Policy Manual* when a termination is made by more than 1 notice, if a termination notice is already in place and a second notice is issued by either party whereby the termination date is earlier than that specified in the first notice, then so long as this second notice is valid, the tenant is required to vacate on the date specified in the second notice. Therefore, in this case the termination notice issued under Section 19 of the Act, which has earlier termination date, will be considered first for the purpose of this decision.

12. The most recent termination notice was served under the Section 19 of *the Residential Tenancies Act, 2018* which states:

Notice where failure to pay rent

19. (1) *Notwithstanding subsection 18(2) and paragraph 18(3)(b),*

(a) where the residential premises is rented from week to week and the amount of rent payable by a tenant is overdue for 3 days or more, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 3 days after the notice is served on the tenant; and

(b) where the residential premises is

- (i) rented from month to month,
- (ii) rented for a fixed term, or
- (iii) a site for a mobile home, and

the amount of rent payable by a tenant is overdue for 5 days or more, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 10 days after the notice is served on the tenant.

(2) Notwithstanding subsection (1), where the tenant pays the full amount of the overdue rent, including a fee under section 15, before the date specified in the notice under paragraph (1)(a) or (b), the rental agreement is not terminated and the tenant is not required to vacate the residential premises.

(3) Subsection (2) does not apply where notice is given to a tenant under paragraph (1)(a) or (b) more than twice in a 12 month period.

(4) In addition to the requirements under section 34, a notice under this section shall

(a) be signed by the landlord;

(b) state the date on which the rental agreement terminates and the tenant is required to vacate the residential premises; and

(c) be served in accordance with section 35.

....

13. I accept the testimony of both parties, that the most recent termination notice was issued on 6-October-2024 and was served electronically under Section 19 of the Act due to the failure to pay rent, requiring the tenant to vacate the property by 18-October-2024. I asked the landlord whether the tenant made any payments before 18-October, and the landlord confirmed that on 14-October the tenant paid rent for October as well as the remaining portion of the September rent.

14. According to the Subsection 2 of Section 19 as stated above, as the outstanding rent was paid in full before the move out date specified in the termination notice, I find that the tenant was not required to vacate the residential premises. The termination notice is not a valid notice.

15. The second notice was served under Section 18 of the *Residential Tenancies Act, 2018* which 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.

.....

- (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.

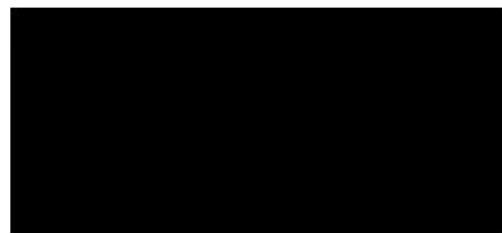
16. The second termination notice was issued on the *Landlord's Notice to Terminate -Standard* form on 27-September-2024, requiring the tenant to vacate by 31-December-2024. I accept the testimony of both parties that this termination notice was served electronically on 27-September and that the tenant confirmed receiving it on that date. As the notice was served properly, I find that the notice complies with the requirements of the Act, providing not less than three months' notice before the move-out date after notice is served where residential premises is rented month-to-month. In accordance with the *Residential Tenancies Act*, 2018 as stated above, the termination notice meets the requirements of the Act and is a valid notice.

Decision

17. The standard termination notice issued by the landlord on 27-September-2024 to vacate the rental premises on 31-December-2024 is a valid notice.

October 24, 2024

Date



Oksana Tkachuk, Adjudicator
Residential Tenancies Office