

Residential Tenancies Tribunal

Application 2024-1061-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 7-January-2025 at 1:47 pm.
2. The applicant, [REDACTED], hereinafter referred to as the landlord, was represented at the hearing by [REDACTED], who attended via teleconference.
3. The respondent, [REDACTED], hereinafter referred to as the tenant, also attended via teleconference.

Preliminary Matters

4. The tenant acknowledged that he was served notice of the hearing more than 10 days in advance.

Issues before the Tribunal

5. Should the landlords' claim for unpaid rent succeed?
6. Should the landlords' application for an order of vacant possession succeed?

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 (the *Act*).
8. Also considered and referred to in this decision are sections 19(1), 19(4), and 34 of the *Act*, as follows:

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.

...

- (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.

Notice where tenant contravenes peaceful enjoyment and reasonable privacy

- 24. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes statutory condition 7(a) set out in subsection 10(1), the landlord may give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises on a specified date not less than 5 days after the notice has been served.

- (2) 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.

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: Unpaid Rent

Landlord's Position

9. The landlord claims for \$20.00 in unpaid rent. Their application had originally claimed for \$4150.00 of unpaid rent, and they testified that the day before the hearing \$6800.00 was owed. They said, however, that the tenant had since paid the entire balance save \$20.00. The landlord did not submit a rental ledger. It is unclear if the amount of rent claimed includes the month of January.

Tenant's Position

10. The tenant did not dispute the landlord's testimony but neither confirmed nor denied he owed the remaining \$20.00.

Analysis

11. The landlord has failed to meet the evidentiary burden. Their claim for unpaid rent fails.

Issue 2: Vacant Possession

Landlord's Position

12. The landlord says they have submitted two valid termination notices (under s. 19 and s. 24 of the *Act*), that the termination date of these notices has passed, and that they therefore are entitled to an order of vacant possession.

Tenant's Position

13. The tenant denies interfering with the right to peaceful enjoyment of the landlord or any other tenants. He admits he fell behind on rent but says he has made every effort to repay it.
14. In order to receive an order for vacant possession, a landlord must have issued a valid termination notice. To be valid, a termination notice must comply with all relevant sections of the *Act*.
15. The landlord submitted a copy of a termination notice (LL#1). LL#1 is in writing in the form prescribed by the minister. It contains the name and address of the recipient. It identifies the residential premises it regards. It identifies itself as being issued under s. 24 of the *Act*. It therefore complies with s. 34.
16. The notice was signed by an agent of the landlord. It specifies the date on which the tenancy is to terminate and the tenant is to vacate the premises. The landlord testified that it was served on the tenant electronically in accordance with s. 35(2)(f). It therefore complies with s.24(2) of the *Act*.
17. The landlord testified that multiple other tenants in the same building have made complaints of excessive noise and threats from the tenant. The landlord's agents

testifying at the hearing had no direct knowledge of these events and could only provide vague hearsay evidence. No witnesses were called, and no sworn affidavits were presented, nor was any documentary evidence provided. The tenant denies the accusations. He says he kept to himself and kept quiet. He speaks from personal experience.

18. Considering the evidence in its totality, I find that the landlord has failed to demonstrate on a balance of probabilities that the tenant interfered with the right to peaceful enjoyment of the landlord or of another tenant. LL#1 is therefore invalid.
19. The landlord submitted one other termination notice, LL#2. LL#2 is in writing in the form prescribed by the minister. It contains the name and address of the recipient. It identifies the residential premises it regards. It identifies itself as being issued under s. 19 of the *Act*. It therefore complies with s. 34.
20. The notice was signed by an agent of the landlord. It specifies the date on which the tenancy is to terminate and the tenants are to vacate the premises. The landlord testified that it was served on the tenant electronically in accordance with s. 35(2)(f). It therefore complies with s. 19(4) of the *Act*.
21. The notice was issued on 20-June-2024. At this point, rent had been overdue for more than 5 days. It gives a move out date of 8-July-2024, which is not less than 10 days after it was served. It therefore complies with s. 19(1)(b) of the *Act*.
22. Policy 07-001 of the Residential Tenancies Program Policy and Procedure Guide describes policy relating to the issuance of more than one termination notice. It states (page 3):

“If a termination notice is already in place and a second notice is issued by the same person whereby the termination date is later than that specified in the first notice, then the person issuing the second notice has thereby indicated that they are intending the tenancy to be extended to the date set out in the second notice. The party receiving this second notice is no longer required to abide by the termination date set out in the first notice and the termination date in the second notice is the date that the tenant is required to vacate. The person who served the 2 notices cannot have the first notice enforced.”
23. In the present case, LL#1 has a termination date of 26-July-2024. By issuing LL#1 on 18-July-2024, the landlords indicated that they would not be relying on LL#2, and the tenant is entitled to rely upon this indication.

Decision

24. The termination notice LL#2 is invalid.
25. The termination notice LL#1 cannot be enforced.
26. In the absence of a valid, enforceable termination notice, the landlord's application for an order of vacant possession fails.

Summary of Decision

27. The landlord's application for an order of vacant possession fails.

29-January-2025

Date


Seren Cahill
Residential Tenancies Office