

Residential Tenancies Tribunal

Application 2024-1130-NL

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 1:44 PM on 19 December 2024 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the tenant", attended the hearing.
3. The respondent, [REDACTED], hereinafter referred to as "the landlord", attended the hearing.

Preliminary Matters

4. The tenant supplied an affidavit (T#1) with her application indicating the landlord was served electronically [REDACTED] on 6 December 2024 at 10:18 AM by her support person [REDACTED]. The landlord did not dispute receiving the notice of hearing. In accordance with the *Residential Tenancies Act, 2018* this is good service.
5. On the application for Dispute Resolution (T#2), the rental premises is identified as [REDACTED] [REDACTED], NL. During the hearing, both parties clarified the rental premises is [REDACTED], [REDACTED], NL.
6. The details of the claim were presented as a fixed term rental agreement which commenced on 1 January 2018, and has since evolved into a month-to-month agreement, with rent set at \$1200.00 due on the 1st of each month. The landlord testified after occupancy, there was an agreement between both parties whereby the tenant would make rent payments on a semi-monthly basis. There was a security deposit of \$500.00 collected on the tenancy prior to occupancy, still in possession of the landlord.
7. In a proceeding under the Residential Tenancies Act, 2018, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome 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 his/her account of events are more likely than not to have happened.

Issues before the Tribunal

8. The tenant is seeking validity of the termination notice provided.

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 relevant and referred to in this decision are Sections 18, 20, 34 and 35 of the *Act*.

Issue 1: Validity of Termination Notices Issued

Relevant Submission

11. The tenant supplied a termination notice (T#3). The notice was a Landlords Notice to Terminate – Standard under section 18 of the *Act*, to terminate a week-to-week rental ‘without cause’. This notice was dated 29 October 2024 with a move out date of 1 December 2024.

Tenant Position

12. The tenant testified she moved into the rental premises on 1 January 2018 at which time she had signed a fixed term rental agreement. This has since evolved into a month-to-month agreement. She stated on 29 October 2024 at 5:29 PM, she received a text message from the landlord advising that she had a month to move out of the rental unit. The tenant testified that she responded to the landlord questioning the reasoning for being issued the notice and advised that he is required to give a 3-month notice. Following this, she testified that the landlord responded ‘okay, I’ll have to go a different route’. She testified that she then received the termination notice giving her one month to vacate and the landlord said that it was because she was smoking in the house, which she denies. During the hearing, she expressed her concerns with the lack of availability of potential rentals available and testified that since filing an application with Residential Tenancies she has agreed move out by 31 January 2025.

Landlord Position

13. The landlord testified that on 29 October 2024, he served the tenant via electronic mail (██████████) a termination notice with a request for her to vacate the rental premises by 1 December 2024. The landlord stated he had agreed to accept rental payments from the tenant on a semi-monthly basis and thought that made the rental agreement a weekly one. He further testified that his real estate agent had visited the property to take pictures and subsequently reported that the apartment smelled of cigarette smoke, which was why he gave the tenant a one-month notice of eviction. The landlord questioned the purpose of the hearing as he and the tenant had since come to an agreement that she would vacate the rental premises by 31 January 2025.

Analysis

14. To be valid, a termination notice must comply with all relevant sections of the Act.
15. The notice was a Landlords Notice to Terminate – Standard under section 18 of the *Act*, to terminate a week-to-week rental ‘without cause’. As a section 18 notice, the following requirements apply:

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.

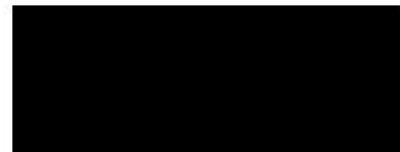
16. Based on the evidence and testimony, this rental agreement began as a fixed term agreement, which subsequently reverted into a month-to-month agreement following the expiration of the last fixed term. The fact that the landlord agreed to accept rent payments on a semi-monthly basis, does not convert the monthly agreement into a weekly agreement.
17. As per section 18(2)(b) above, landlords wishing to provide a standard notice of termination are required to provide not less than 3-months notice where the residential premises is rented on a monthly basis. The termination notice dated 29 October 2024 gives a move out date of 1 December 2024, which is less than the full 3-months notice requirement and does not provide a sufficient notice period in accordance with the *Act*.
18. I also note that the landlord testified that he gave the tenant a one-month notice of eviction as it was reported to him that there was a smell of cigarette smoke in the apartment, and smoking in the premises is violation of the terms of the rental agreement. This, if true, might constitute a material breach of a rental agreement for which a landlord could issue a notice of termination for cause in accordance with section 20 of the *Act*. However, as per section 20(2) of the *Act*, no evidence was provided to demonstrate that the landlord had provided the tenant with written notice of the contravention allowing reasonable time to remedy the situation prior to issuing a termination notice. Further, there was no evidence provided demonstrating that a termination notice for cause was issued.

Decision

19. The notice of termination dated 1 December 2024 is not a valid notice.

10 January 2025

Date



Michael Reddy, Adjudicator
Residential Tenancies Office