

Residential Tenancies Tribunal

Application 2024-1205-NL

Oksana Tkachuk
Adjudicator

Introduction

1. Hearing was called at 9:03 a.m. on 11-February-2025.
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 submitted an affidavit with their application stating that they had served the tenant with the notice of hearing electronically via email to [REDACTED] on 22-January-2025 (LL#1). The tenant confirmed receiving notice of the hearing. In accordance with the *Residential Tenancies Act, 2018* this is good service, I proceeded with the hearing.
5. There is a written fixed term rental agreement which commenced on 1-September-2024 for one year, however the tenant moved into the unit in February-2019. Rent is \$2000.00 per month and due on the first of each month. A security deposit of \$650.00 was collected in the beginning of the tenancy and is in landlord’s possession.
6. The landlords amended their application to include hearing expenses of \$20.00.

Issues before the Tribunal

7. The landlord is seeking:
 - Validity of a Termination Notice;
 - An Order for Vacant Possession of the rented premises;
 - Hearing expenses \$20.00.

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.

1. Also, relevant and considered in this decision is the following section of the *Residential Tenancies Act, 2018*: Section 16: Rental increase, Section 18: Notice of termination of rental agreement, Section 19: Notice where failure to pay rent, Section 34: requirements for notices, and the following sections of the *Residential Tenancy Policy Manual*: Section 7-1: Notice of termination and Section 12-1: Recovery of Costs.

Issue #1: Validity of the Termination Notice Vacant Possession of the Rented Premises

Relevant submission

9. The landlords submitted copies of four termination notices issued to the tenant and stated that they were served electronically on same date as stated on the termination notices.

- Three notices were issued under the section 19 of the Act due to failure to pay rent: 7-June-2024 requiring the tenant to vacate by 17-June-2024 (LL#2); 7-October-2024 requiring the tenant to vacate by 17-October-2024 (LL#3); 15-January-2025 requiring the tenant to vacate by 26-January-2025 (LL#4).
- One notice was issued under Section 18 of the Act as a standard termination notice: 30-December-2024 requiring the tenant to vacate by 31-March-2025 (LL#5).

Landlord's Position

10. The landlords stated that they have been very patient with the tenant over the past few years, despite rent not being paid in time. The landlords explained that they had numerous conversations with the tenant and even offered a payment arrangement. However, the situation worsened in the last few months, leading them to issuing termination notices and seek vacant possession of the rental unit.

Tenant's Position

11. The tenant confirmed receiving termination notices and did not dispute that rent had not been paid in full and in time. However, the tenant claimed that the landlords did not properly serve her with the notice of rent increase, and she refused to pay new rental amount.

Analysis

12. The landlords submitted rental ledger to support their claim:

Sept. 9/24	September Rent	\$2000.00	-1800.00	\$200.00
	Late fees	\$13.00	-13.00	\$200.00
Oct. 11	October Rent	\$2000.00	-1800.00	\$200.00
Oct. 16	Payment + late fee	\$235.00	-235.00	\$0
NOV. 4	November Rent	\$2000.00	-1400.00	\$1600.00
NOV. 8	Rent Payment		-500.00	\$1100.00
NOV. 25	Rent Payment		-400.00	\$700.00
Dec. 13	Rent payment		-70.00	\$61.00
Dec. 13	Late fees	\$61.00	-61.00	\$0
Dec. 1	December Rent	\$2000.00	-0	\$2000.00
Dec. 25	Rent payment	\$2000.00	300.00	\$1700.00
Dec. 28	Late fees	59.00	-59.00	\$1759.00
Jan. 2	Dec. Pmt.	\$1759.00	-1700.00	59.00
Jan. 1	Jan. Rent	\$2000.00	-0	\$2000.00
Jan. 20	Jan. Payment	\$2000.00	1200.00	\$800.00
Jan. 23	Jan Payment	\$800.00	300	\$500.00
Jan. 31	Jan. Rent Due	\$563.00	-563.00	\$0

13. The notices were served under 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.

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14. I accept the landlord's and the tenant's testimony, that there were four termination notices issued to the tenant, and that three of them were issued due to the failure to pay rent. Under Section 19(a) of the Act, if a tenant fails to pay rent, the landlord may issue a termination notice.

15. As the tenant disputed that the rent was increased against the legislation, I asked the landlord how and when the rent was increased. The landlords testified that in May-2024, they issued the tenant a three-months termination notice, set to take effect at the end of the tenancy, and attached a new lease specifying an increased rent amount. The landlord stated that the previous rent was \$1800.00 and the new lease indicated an increased rent of \$2000.00.

16. According to the Section 16 of the Act, *the landlord shall give the tenant written notice of the increase not less than 6 months before the effective date of the increase where the residential premises is rented for a fixed term.* Although I accept that the tenant signed the new rental agreement in September-2024, the failure to provide the required notice renders the rent increase invalid. Therefore, I find that the lawful rent remains \$1800.00 instead of \$2000.00. Based on this determination, I will proceed with calculation to assess the validity of the termination notice. See below breakdown of amended ledger:

Amended Rental Ledger 2024-1205-NL			
Date	Action	Amount	Total
	Balance	\$0.00	
September 1, 2024	Rent due	\$1,800.00	\$1,800.00
September 9, 2024		Payment	-\$1,800.00
October 1, 2024	Rent due	\$1,800.00	\$1,800.00
October 11, 2024		Payment	-\$1,800.00
November 1, 2024	Rent due	\$1,800.00	\$1,800.00
November 4, 2024		Payment	-\$400.00
November 8, 2024		Payment	-\$500.00
November 25, 2024		Payment	-\$400.00
December 1, 2024	Rent due	\$1,800.00	\$2,300.00
December 13, 2024		Payment	-\$700.00
December 25, 2024		Payment	-\$300.00
January 1, 2025	Rent due	\$1,800.00	\$3,100.00
January 2, 2025		Payment	-\$1,700.00
January 20, 2025		Payment	-\$1,200.00
January 23, 2025		Payment	-\$300.00
			-\$100.00
			-\$100.00

17. According to the Section 7-1 of the *Residential Tenancies Policy*, *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*. For this reason, the validity of the latest termination notice issued under Section 19 of the Act will be considered in this decision.

18. Based on the amended ledger, I find that the tenant was in rental arrears when the latest termination notice was issued on 15-January-2025, however, tenant paid off arrears before the termination date of 26-January-2025. For those reasons I find that the termination notice does not meet the requirements of the Act and is not a valid notice.

19. Upon reviewing the *Standard termination notice* issued by landlords on 30-December-2024, requiring the tenant to vacate the rental unit by 31-March-2025, I find that this notice is not valid. This termination notice doesn't comply with Section 18(2c) of the *Residential Tenancies Act*, where a landlord shall provide the tenant not less than three months' notice before the end of term, where the residential premises are rented for a fixed term.

Decision

20. The Standard termination notice is not a valid termination notice.

21. The termination notice issued due to the tenant's failure to pay rent on 15-January-2025 is not a valid termination notice.

22. The landlord's claim for vacant possession does not succeed.

Issue # 2: Hearing expenses \$20.00

Analysis

23. Section 12-1 of the *Residential Tenancies Policy* states that in general, claimable costs may include the filing fee. The landlords paid \$20.00 for the application and are seeking reimbursement. As the landlord's claim has not been successful, the tenant shall not pay the hearing expenses.

Decision

24. The landlord's claim for hearing expenses does not succeed.

Summary of Decision

25. The Standard termination notice issued on 30-December-2024 is not a valid termination notice.

26. The termination notice issued under Section 19 on 15-January-2025 is not a valid termination notice.

27. The landlord's claim for vacant possession does not succeed.

28. The landlord's claim for hearing expenses does not succeed.

February 24, 2025

Date

Oksana Tkachuk, Adjudicator
Residential Tenancies Office