

Residential Tenancies Tribunal

Application [REDACTED]
[REDACTED]

Decision 21-0053-03

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:45 a.m. on September 8, 2021.
2. The applicants, [REDACTED] and [REDACTED] hereinafter referred to as “tenant1 and tenant2” attended by teleconference.
3. The counter applicants, the [REDACTED]
[REDACTED] represented by [REDACTED] and [REDACTED] hereinafter referred to as “landlord1 and landlord2” attended by teleconference

Preliminary Matters

4. The tenants did not submitted an affidavit regarding the service of documents for the notification of hearing. The landlords confirmed that they were both served by the Sheriff’s department personally: Landlord2 on September 25, 2021 and Landlord1 a week later. They had no issue with their service.
5. The landlords did submit their affidavit (LL#01) stating that they had a courier personally serve the tenants on October 15, 2021. The tenants agreed that this is how they were served and there was no issue with their service. The parties agreed that they entered into a written rental agreement (LL#02) for a term of one year beginning 01-September-2012. At the end of the year term, the agreement became a monthly agreement. The rent is for \$725.00 plus utilities for a rental period starting on the 1st day of the month to the last. Rent is due on the 1st day of the month. The tenants paid a security deposit of \$275.00 on 21-August-2012. Tenant1 confirmed this information.
- 6.

Issues before the Tribunal

7. The tenants are seeking validity of the termination notice
8. The landlords are seeking vacant possession.

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*.
10. Also relevant and considered in this case from the *Residential Tenancies Act, 2018*, Section 18: Notice of termination of rental agreement, and Section 29: Termination for invalid purpose.

Issue 1: Validity of Termination Notice

Tenants' Position

11. Tenant1 said that she received the termination notice (TT#05) under Section 18 of the *Residential Tenancies Act, 2018*., through registered mail and she thought it was dated for around June 24, 2021. The termination notice is signed for 25-June-2021 with a termination date of 30-September-2021.
12. Tenant 1 claims they do not understand why they have been evicted. There have been long standing disagreements with the landlords and because of this they believe they have been given an eviction for an invalid purpose as prohibited under section 29 of the Residential Tenancies Act.
13. Tenant1 and Tenant2 both said that the disagreement with the landlords started in 2019.
14. Tenant1 said that landlord1 gave her a letter in November of 2020 stating that they could enter the apartment at any time without notice and had her sign this letter. She later found out that no one else had received that letter. She then revoked her permission and told him he would have to provide 24 hours' notice as per the *Residential Tenancies Act; 2018*.
15. Tenant1 said that the landlords had a fire inspection in November of 2020 and that she never denied entry to them and the fire inspector and that the landlords could have gone into the apartment because she has a hidden key and he knows where the key is.
16. Tenant1 also said that the landlords had increased their rent by \$50.00 last year, November 2020 and that this was not done to all of the apartments. She said she and tenant2 were fine with the increase but she thought this was done as a way to intimidate them.
17. Tenant1 and Tenant2 both state that they haven't spoken with the landlords since November of 2020.

Landlords' Position

18. Landlord1 acknowledges that there has been long standing tension with the tenants, he said that in 2019 he was falsely accused of saying something to tenant1 and since that time he has felt uncomfortable going into his own building. He said that he would have liked to evict at that time, but they didn't.
19. Landlord1 said that he never gave the tenants a letter saying that he could enter at any time.
20. Landlord1 said that they had a fire inspection completed on all three of the buildings that they manage in November of 2020, he submitted the Fire Inspection Entry Request Letters (LL#03A,B &C) provided to the tenants at each of the three apartment buildings requesting each apartment have a signer giving permission for entry. He indicated that every apartment signs consent for the annual inspection of the fire alarm system and permitted both landlords and the inspection technician to enter the apartments. The only apartment without a signature is the apartment rented by tenant1 & tenant2.
21. Landlord1 said that they did raise the rent in the tenants' apartment. He said the rent was raised in all of the apartments with the exception of a single, one bedroom apartment.
22. Landlord1 said he is afraid to go into his building and has avoided the tenants; he has let landlord2 handle these tenants. They have not had communication since November 2020.
23. Landlord1 said that the termination notice (TT#05) that was submitted to this board, was sent by registered mail to the tenant's on June 25, 2021. The termination notice is signed on June 25, 2021 with a termination date of September 30, 2021.

Analysis

24. Section 29 of the Residential Tenancies Act; 2018, prohibits the landlord from evicting a tenant as a way to prevent the tenant from making a complaint or filing an application against the tenant. When a tenant claims the landlord has issued a termination notice for an invalid purpose and files an application for dispute resolution accordingly, this application must be filed no later than 1 month after receiving the termination notice.
25. Section 29 of the *Residential Tenancies Act; 2018*, says:

Termination for invalid purpose

- 29. (1) A landlord shall not**
 - (a) terminate or give notice to terminate a rental agreement; or
 - (b) directly or indirectly coerce, threaten, intimidate or harass a tenant or a member of a tenant's family,

in retaliation for, or for the purpose of deterring the tenant from, making or intervening in a complaint or application in relation to a residential premises.

(2) Where a tenant who is served with a notice of termination of a rental agreement believes that the landlord has contravened subsection (1), he or she may, not later than one month after receiving the notice, apply to the director under section 42 for an order declaring that the rental agreement is not terminated.

26. Both parties in this file all acknowledge that they have been involved in a contentious relationship for the past couple of years.
27. They also both acknowledge that last November there were issues around access to the apartment and a rent increase. Since that time both parties agreed that they have just avoided each other since and haven't really communicated until the termination notice was served to the tenants.
28. Landlord1 acknowledged that when they were first in conflict he wanted them evicted, however they did not evict at that time.
29. I find that Section 29 of the *Act*, is there as a safety measure to ensure that landlords don't abuse their power to evict. This Section is not to say that landlords can't evict, raise rent or disagree with their tenants.
30. The landlords have had limited or no contact with the tenants since November of 2020. It would be difficult to link a direct correlation to the termination notice being directly tied to something that occurred 7 months before. The tenants' claim that the eviction is a termination for an invalid purpose fails.
31. Both parties agree that the termination notice (TT#05) was sent by registered mail, it is signed for the 25-June-2021 with an eviction date of 30-September-2021. Section 18 of the *Act* says:

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

.....

(b) not less than 3 months before the end of a rental period where the residential premises is rented from month to month; and

.....

(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.

32. Tenant1 said that she doesn't understand the reason why she is evicted. Section 18 of the *Act*, is a termination without cause. This is a standard termination that does not require an explanation as to why it is served. This section is so that any tenant or landlord can give notice that they would like to end the contract or rental agreement that they have entered into.
33. A landlord terminating a tenancy must follow guidelines as outlined in paragraph 30. The termination notice served by these landlords meet all the requirements stated in the *Act* and this notice is valid.

Decision

34. The termination notice is valid.

Issue #2: Vacant Possession of the Rental Premises

35. The landlords have submitted an application seeking vacant possession of the premises.
36. The termination notice is valid, as determined in paragraph 34. Therefore the landlords' submission for vacant possession succeeds.

Decision

37. The landlords are granted an order of possession.
38. The tenants will vacate the premises immediately and they will pay to the landlord any costs charged to the landlord, by the Office of the High Sheriff, should the landlord be required to have the Sheriff enforce the attached Order of Possession.

Issue #3: Hearing Expenses

39. Both the landlord and tenant submitted for hearing expenses, both claimed for the \$20.00 application fee and for the cost of service of documents. Both only provided receipts for the application fee cost, the cost of service will not be considered.
40. The landlord incurred the cost of \$20.00 to file this application and provided the receipt for same (LL#06). As the landlords' claim is successful the landlord shall retain this expense from the damage deposit.

Summary of Decision

The landlord is entitled to:

- Retain \$20.00 of the security deposit for the cost of hearing expenses.
- An Order of Possession

The tenant will:

- Vacate the premises immediately; and
- Pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

November 12, 2021

Date