

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0220-05

Application [REDACTED]

John R. Cook
Adjudicator

Introduction

1. Hearing was called at 1:10 pm on August 02, 2021 via teleconference.
2. The applicant, [REDACTED], represented by [REDACTED], hereinafter referred to as “the landlord,” attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant,” also attended by teleconference.

Issues before the Tribunal

4. The landlord is seeking an order for vacant possession of the rented premises as per section 18 of the *Residential Tenancies Act, 2018*.
5. The tenant has submitted a counter complaint questioning the validity of the termination notice as per section 29 of the *Residential Tenancies Act, 2018*.

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the Residential Tenancies Act, 2018: jurisdiction of the Director of Residential Tenancies.
7. Also relevant and considered in this case is section 18 of the *Residential Tenancies Act, 2018*: notice of termination of rental agreement, section 29, termination for invalid purpose, as well as section 34: requirements for notices.

Issue 1: Vacant Possession of Rented Premises

Issue 2: Validity of Notice of Termination

Relevant Submissions

The Landlord's Position

8. The landlord and tenant agreed that there was a written agreement for a monthly rental around October 2005. This agreement was transferred to the landlord when the company bought the apartment building. The current rent is \$855.00 due the first of the month. The tenant paid a security deposit of \$250.00.
9. Included in the application, the landlord submitted a copy of a termination notice (█ #03) which he indicated that the resident manager placed under the tenant's front door on April 30, 2021.
10. The termination notice was issued under section 18 of the *Residential Tenancies Act, 2018* (notice of termination of rental agreement) with an effective termination date of July 31, 2021.
11. The landlord stated that the tenant is still in possession of the apartment and he is seeking an order for vacant possession of the premises.

The Tenant's position

12. The tenant believes that he is being evicted in retaliation for speaking out against issues that have been ongoing at the apartment building.
13. For example, the tenant testified that he had filed an Access to Information and Protection of Privacy (ATIPP) request through which he was seeking a provision of the number of visits the police and fire department had made to the rental complex. He testified that he informed the landlord about that request when he served him with his application in June 2021, 2 months after he had received the termination notice.
14. He also stated that in 2018 he had complained about a bedbug infestation in his apartment, but the pest control company hired by the landlord to address that issue was unable to treat his apartment because there was too much clutter in his unit. He testified that his unit was never treated and he had to address the issue by himself. He testified that he never raised the issue of bedbugs with the landlord since 2018, even though he had encountered a second infestation, because he believed that they would not address the issue.
15. The tenant also stated that about 2 weeks before he had received the termination notice, someone at the complex had pulled the fire alarm. The tenant stated that this was happening quite frequently. On this particular date,

the tenant approached the resident manager and stated to him: "Something has to be done."

16. He also testified that sometime after he had received the termination notice, he complained to the resident manager about the number of dogs that were allowed in the complex.
17. Additionally, he testified that he had been complaining to the resident manager about the fact that there are beer cans and bottles left around the complex and that there had been drinking taking place in the common areas and outside. He couldn't remember the dates when he had made these complaints, but the tenant testified that he had complained both before and after he had received the termination notice.
18. He also testified that after he had received the termination notice, there had been a stabbing at the complex and he also stated that there are frequently fights among some of the residents there, and that there are loud noises coming from some of the units. He testified that he had also complained about those issues to the landlord after his notice was received.
19. Finally, the tenant stated that he is having difficult sleeping, because of the noise at the complex. He stated that he had complained to the landlord both "before and after" he received his termination notice, but he could not recall any dates.

The Landlord's Rebuttal

20. The landlord denied that he had issued the termination notice to the tenant in retaliation for the complaints that he reported here.
21. He claimed that he takes the complaints of tenants at this complex and his other residential complexes very seriously and he attempts, as best he can, to resolve the issues which are under his control. For example, the landlord stated that in response to the tenant's complaint about bedbugs, he hired a professional pest control company to deal with that matter. That the tenant's unit was not sprayed was not because of anything the landlord had failed to do, but because of the advice he had received from those experts.
22. He also acknowledged that there are ongoing issues at the complex and that there are some residents residing there who are causing troubles, and are responsible for the visits from the police and the fire departments. With respect to those complaints, the landlord stated that he is also attempting to remedy those matters and he has initiated eviction proceedings against a number of residents at the complex. He pointed out that not all of those troublesome residents have been removed as he has to follow the guidelines of the Tenancies Board and wait until he is able to have a hearing to seek eviction orders.

23. The landlord pointed out that it is evident that the tenant is not content at the complex and he stated that he is doing everything that he possibly can to address his concerns. The landlord figured that it would be in the best interest of the tenant to seek a new apartment and he also stated that he had been in contact with [REDACTED] and they informed him that they are willing to transfer to the tenant to a new unit outside of this complex.

Analysis

24. The relevant subsections of s.18 of the *Residential Tenancies Act, 2018* state:

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

...

(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

25. Section 18 of the Act allows a landlord to terminate a rental agreement, on 3 month's notice, without having to provide reasons to either the tenant or this Board.

26. However, section 29 of the Act also states:

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.

27. I was not persuaded that the notice the landlord had issued to the tenant was given in retaliation for the complaints he had been making. Some of those complaints, e.g., the complaints about the fighting, were made after the notice was issued and obviously the landlord could not have issued the notice, on 30 April 2021, in retaliation for complaints that he had not yet made. The same goes for the ATIPP requests. The landlord was unaware of those requests until he received this application, almost 2 months after the notice was issued.
28. I was also not persuaded that the tenant's complaints about the bedbugs had anything to do with the issuance of the termination notice as that issue arose in 2018, 3 years before the termination notice was issued. That remoteness makes it unlikely that there was any causal relationship between those 2 events, and the tenant acknowledged that he had made no complaints since 2018.
29. With respect to the complaints about the beer cans/bottles and his lack of a good night's sleep, the tenant testified that he did not know the dates when he had made those complaints and I have to conclude that he had also failed, here, to establish that there was any link between those complaints and the issuance of the notice.
30. I was also not convinced that there was any connection between the tenant's complaint to the resident manager about the frequent pulling of the fire alarms, i.e., his statement that "something has to be done", and the fact that he received a termination notice on 30 April 2021. To me, that off-hand comment hardly counts as a complaint, and the statement seems so innocuous and insignificant that it probably would not have even registered with the resident manager on that day, and I find it improbable that the landlord would terminate the tenancy because of that comment.
31. I also accept the landlord's claim that in response to the tenant's complaints he had not sought to terminate the tenancy but rather had attempted to rectify the issues as they arose. It was his testimony that he had been responding to the requests of the tenant, and the other tenants at the complex, to carry out any required maintenance at the complex or in the individual apartments, and that he had initiated eviction proceedings against the troublesome tenants at the complex.

32. As there was insufficient evidence to establish, on the balance of probabilities that the landlord had terminated this tenancy because of any complaints the tenant had been making about the conditions at the residential complex, and as the landlord has the right, under the *Act*, to terminate a rental agreement on just 3 months' notice, without having to justify his reasons for terminating that agreement, I find that the landlord was in a position, on 30 April 2021, to terminate the agreement under section 18 of the *Act*.
33. As the notice meets the requirements set out in this section of the *Act*, it was properly served, it is a valid notice and the tenant ought to have vacated the apartment on July 31, 2021.

Decision

34. The termination notice issued to the tenant on 30 April 2021 is a valid notice.
35. The landlord's claim for an order for vacant possession of the rented premises succeeds.
36. The tenant shall 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.

20 August 2021

Date

