

Residential Tenancies Tribunal

Application █

Decision 21-0336-05

Jacqueline Williams
Adjudicator

Introduction

1. The hearing was called at 1:49 p.m. on September 21, 2021.
2. The applicants, █ hereinafter referred to as "Tenant1 and Tenant2," attended by teleconference. █ attended as the tenants' authorized representative, hereinafter referred to as "█."
3. The respondents, █ and his brother, █, hereinafter referred to as "Landlord1" and "Landlord2" also attended by teleconference.

Preliminary Matters

4. The tenants submitted an Authorized Representative form (SB#03) to have █ attend the hearing as their representative.
5. The landlords both manage the rental units with another person. They both participated in the hearing.

Issues before the Tribunal

6. The tenants are questioning the validity of the termination notice that they received from the landlords.

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*.
8. Also relevant and considered in this case is section 18 of the *Residential Tenancies Act, 2018*: section 18: notice of termination of rental agreement, section 34: requirements for notices, and section 35: Service of documents.

Issue 1: Validity of Termination Notice

Relevant Submissions

9. All parties confirm that Tenant1 sent notification of hearing to Landlord1 by registered mail to his home address on August 26, 2021. Registered mail is considered delivered after 5 days; August 31, 2021. This is more than the minimum 10 days required and is good service.
10. There is a rental agreement submitted (████#01) for May 01, 2019. The tenants had an earlier agreement in May 2016 when they first took occupancy. The current agreement is the one that was submitted.
11. The rental agreement is a monthly agreement for \$700.00 per month, due on the first of each month. There was no security deposit paid.

Tenants' Position

12. The tenants believe that the standard termination notice █████#02 they received under section 18(2)(c) is not valid.
13. Tenant1 stated that a man came to their house and served her the termination notice in person on June 23, 2021; it is signed for that date. The termination notice move out date is dated for August 31, 2021.
14. Tenant1 said she did not agree verbally to a new date with the landlord and that they are trying to find a new place to stay.
15. Tenant1 is concerned that "they will be out on the street with no place to go."
16. █████ said that it doesn't matter if the tenants did or did not have conversations with the landlords; they believe that notice that they received is not valid and this is the only relevant matter.
17. Tenant1 said that Landlord2 spoke with her to find out if she was going to cancel the hearing, or was she going to attend? She told him that she was going and that she "would be in trouble" if she didn't attend.

Landlords' Position

18. Landlord1 was named in the application for dispute resolution (████#05), he is out of the country at this time. Landlord2 was the individual working with the tenants and the termination notice. Landlord1 attended as required, but deferred to Landlord2 to provide the details of the termination notice.
19. Landlord2 stated that the reason for termination is they are selling the house. He has no issues with the tenants and has provided them a good reference to a potential new landlord.
20. Landlord2 stated that the termination notice was intended to be dated for June 1, 2021, however the other manager, ██████████ didn't deliver the notice to the tenants until June 23, 2021.

21. Landlord2 acknowledges that the notice should be for 3 months. He followed up with the tenants and told them that the termination date should be for September 23, 2021.
22. Landlord2 said he thinks Tenant1 must have misunderstood the conversation. He believes he cleared up the mistake they made with the late delivery of the termination notice (█ # 02) when he told them that they could stay until September 23, 2021. He also told them they could actually stay until the end of September if they needed the time to get into their new place.
23. Landlord2 said that they did not serve a new termination notice with the updated information but instead had a verbal agreement.
24. Landlord2 said he did speak to Tenant1 to find out if the hearing was going ahead. He did this because he thought they had resolved the matter and that the hearing wouldn't be necessary.

Analysis

25. The *Residential Tenancies Act, 2018* Section 18 (2) & (9) states:

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.

....

(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.

26. Section 18 (2) (b) states that the notice be not less than 3 months before the end of a rental period. The termination notice provided to the tenants (█#02) is not for a 3 month period. It is dated for August 31, 2021.

27. Landlord2 acknowledges that the date should be later due to when the notice was served on the tenants. He attempted to amend this by verbally with the tenant by changing the date to September 23, 2021.
28. September 23, 2021 is not the end of a rental period; the tenants pay rent on the 1st of each month, the end of a rental period is the last day of the month.
29. Section 18 (9) (b) states that the notice be given not later than the first day of a rental period. As the notice was served on June 23, 2021 it would be considered served beginning July 01, 2021.
30. A termination notice under section 18 given for July 01, 2021 should be for a termination date no earlier than September 30, 2021.
31. The landlords and the tenants have only this notice in writing.

Summary of Decision

32. As the time frames do not meet the requirements of the *Act* the termination notice (████#02) which was given to the tenants is not a valid termination notice.

September 28, 2021

Date

