

Residential Tenancies Tribunal

Application 2022 No. 82NL

Decision 22-0082-06

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 11:04 PM on 14 April 2022 via teleconference.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED], hereinafter referred to as "the landlord". The respondent, [REDACTED], hereinafter referred to as "the tenant", was also in attendance, along with her sister, [REDACTED] ("Sister").

Issues before the Tribunal

3. The landlord is seeking an order for vacant possession of the rented premises.

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this case is section 18 of the *Residential Tenancies Act, 2018* and William & Rhodes Canadian Law of Landlord and Tenant.

Issue 1: Vacant Possession of Rented Premises

Relevant Submissions

The Landlord's Position

6. The landlord stated that he had entered into a monthly rental agreement with the tenant in 2014. The current rent is set at \$855.00 per month and the landlord stated that the tenant had paid a security deposit of \$570.00 on 02 October 2014.

7. With his application the landlord submitted a copy of a termination notice (■■■ #1) which he stated was sent to the tenant, by registered mail, on 20 December 2021. A copy of the tracking history was also submitted with the notice showing that the tenant signed for it on 06 January 2022.
8. That notice was issued under section 18 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 31 March 2022.
9. The tenant has not moved out, as required, and the landlord is seeking an order for vacant possession of the rented premises.

The Tenant's Position

10. The tenant acknowledged that she had received the termination notice submitted by the landlord.
11. She pointed out, though, that the notice is dated "16 December 2022", while it was actually sent in 2021.
12. The tenant also complained that there are several maintenance issues in her apartment, including holes in ceilings and a problem with insects. She also pointed out that she always pays her rent on time and she complained that the landlord had not provided her with any explanation as to why he was terminating their agreement.
13. The tenant stated that she is currently in the process of trying to find a new apartment and she requested that she be given more time.

Analysis

14. 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; 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

15. The tracking history associated with the termination notice shows that it was sent on 20 December 2021. According to section 35 of the *Act*, although it was only collected for by the tenant on 06 January 2022, it is considered to have been served on her on the fifth day after mailing: 25 December 2021.
16. I pointed out to the tenant at the hearing that 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. I also pointed out to her that her complaints about the maintenance issues in her unit also do not affect the validity of the notice.
17. However, with respect to the issue of the incorrect date, that issue does render the notice invalid.
18. In William & Rhodes Canadian Law of Landlord and Tenant, the authors write that one of the general principles in construing notices is that "an inaccuracy in certain matters such as the date of termination cannot be ignored even if the wrong date was inserted by a slip" and "a notice giving an incorrect date of termination is bad, even if both parties understood the date to which it was intended to refer". Although it is not the termination date that the landlord got wrong, but rather the date of issue, I find that this is an inaccuracy that also "cannot be ignored" and the notice is therefore defective.
19. As such, the landlord's claim for vacant possession does not succeed.

Decision

20. The termination notice issued to the tenant on 25 December 2021 is not a valid notice.
21. The landlord's claim for an order for vacant possession of the rented premises does not succeed.

26 April 2022

Date


John R. Cook
Residential Tenancies Tribunal