

Residential Tenancies Tribunal

Applications: 2022 No. 0292 NL

Decision 22-0292-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 11:04AM on 30 May 2022 via teleconference.
2. The applicant, [REDACTED], as represented by [REDACTED] and hereinafter referred to as “the landlord”, participated in the hearing.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant”, participated in the hearing.
4. An affidavit of service was provided by the landlord (L#1) confirming that the tenant was served of the claim against her.
5. The details of the claim were presented as fixed term agreement, originally signed 1 January 2016, with rent currently set at \$910.00. The landlord testified that the current fix term rental agreement with the tenant runs until the end of December 2022 and that the tenant’s rent is partially subsidized by Newfoundland Labrador Housing. A security deposit in the amount of \$442.50 is receipted in the copy of the original written rental agreement that was provided (L#2).
6. In a proceeding under the *Residential Tenancies Act*, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. The standard of proof, in these proceedings, is referred to as the balance of probabilities which means the applicants have to establish that their account of events is more likely than not to have happened.

Issues before the Tribunal

7. The landlord is seeking the following:
 - An order for vacant possession.

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* (the *Act*).
9. Also relevant and considered in this case is section 18 of the *Act*.

Preliminary Matters

10. The tenant's husband, as noted on the written rental agreement is deceased.
11. The rental premises is an apartment building with more than ■ units.

Issue 1: Vacant Possession

Landlord's Position

12. The landlord issued a termination notice to the tenant on 8 December 2021 under section 18 of the *Act* (L#3). The stated move out date was identified as 31 March 2022. The notice was served to the tenant on the day it was issued.
13. The landlord testified that the tenant has not vacated as required. She is seeking an order for vacant possession of the rental premises.

Tenant's Position

14. The tenant acknowledged the termination notice received in December 2021. She stated that she did not move out as required at the end of March 2022 because she knew that she could stay in the rental premises until the Sheriff came.
15. The tenant testified that she has lived in the rental premises for 6 years and that she is ■ years old. She stated that her husband has died, and that she would go elsewhere but that she does not have anywhere else to go.
16. The tenant testified that she knows she is behind in rent and that she aims to catch-up this week. She further testified that she recently had a heart attack from the stress of not knowing why she was being evicted. She stated that she deserves to know why she has to go.

17. The tenant testified that her unit is full of bugs and not fit to live in, that the elevator is too small for hospital stretchers, and that the tenants recently had to use laundry facilities elsewhere because facilities were closed in the building.
18. In response to concerns raised by the tenant, the landlord testified that there had been a bedbug situation in the building, originating in the shared laundry. Once this issue was discovered, the landlord testified her company and onsite building caretaker were very proactive in their response. She further testified that the building caretaker is onsite to monitor and respond to any and all security concerns.

Analysis

19. The validity of a termination notice issued under the *Act* is determined by its compliance with any number of provisions of the *Act*. If and where a notice is found to not comply with any particular provision, the notice is deemed not valid.
20. Specific to a termination notice issued by a landlord under section 18 of the *Act*, it is required to comply with each of the following to be deemed valid:
 - Timelines for issuing a notice (18(2) of the *Act*);
 - Specific details on notices issued (18(9) of the *Act*);
 - Specific details on notices issued (34 of the *Act*); and
 - Requirements for service of the notice (35 of the *Act*).
21. Regarding the Section 18 Termination Notice issued to the tenant on 8 December 2021, I note an immediate contradiction in the testimony and evidence provided by the landlord. In particular, the landlord testified that the current fixed term rental agreement with the tenant runs until December 2022.
22. Consequently, the section 18 Termination notice issued to the tenant on 8 December 2021 fails the first test of validity put before it for non-compliance with the timelines for notice required under clause 18(2)(c) of the *Act* (emphasis added):

Notice of termination of rental agreement

(2) A landlord shall give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises

(c) not less than 3 months before the end of the term where the residential premises is rented for a fixed term.

23. Where the landlord testified that the tenant has a fixed term rental agreement that runs until December 2022, a section 18 termination notice that identifies any date prior to 31 December 2022, is not valid.

Decision

24. The landlord's claim for an order for vacant possession of the rented premises does not succeed.

01 June 2022

Date



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