

Residential Tenancies Tribunal

Application 2022-No.409-NL

Decision 22-0409-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:07 a.m. on 07-July-2022
2. The applicant, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference

Preliminary Matters

4. The tenant submitted an affidavit (TT#01) stating that she served the landlord with notification of the hearing by prepaid registered mail. She sent the documents on 17-June-2022 and it was delivered on 30-June-2022. It is our policy to consider documents served by prepaid registered mail delivered after 5 days. This is therefore good service.

Issues before the Tribunal

5. The tenant is seeking validity of termination notice.

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*.
7. Also relevant and considered in this decision are the following sections of 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.

Tenant's Position

8. The tenant said she has a verbal rental agreement with the landlord. She said she moved in on 01-October-2018, she pays \$600.00 a month rent in two installments of \$300.00 on the 1st and 15th day of each month. She did not pay a security deposit.
9. The tenant said that the landlord served her with a notice of termination (TT#02) on 13-May-2022. The tenant said that the landlord sent her the termination notice on the 13-May-2022 with a termination date of 31-August-2022. She said he sent it to her by text.
10. The tenant said that the landlord holds the rate he charges for rent over her head. She said he convinced her to give up her former apartment and move into the current apartment.
11. The tenant said that the landlord was having issues with the upstairs tenant and was trying to evict him. She said he was at the Residential Tenancies offices for assistance with having the other person evicted and he called her during the meeting. When he called her, he told her he wanted her to sign a statement saying that she felt she was in danger from the upstairs tenant.
12. The tenant said that she had complained to the landlord that the upstairs tenant was permitting his dog to pee on the patio which is over her door. She said that the dog pee was coming down on top of her. She said she had no other issues with the upstairs tenant.
13. She said that the landlord called her at 1:26 and told her that he wanted her to sign the statement. She told him that she couldn't sign a statement that wasn't true. He became frustrated and hung up on her. He then called her back at 1:30 and she again refused to sign the statement. He told her at that time that if she didn't sign the statement, then she would be out. She said that she believed Residential Tenancies staff overheard this conversation.
14. She said that at 3:59 she received the text including the termination notice. She believes this notice was served in retaliation for her not agreeing to sign an untrue statement against the upstairs tenant. She included pictures of screen shots showing the incoming calls (TT#03).
15. She said he is saying that the house is for sale, however, there has been no real estate activity and there is a small sign behind where the car is parked that isn't visible and contains no contact information (TT#03).

Landlord's Position

16. The landlord confirms the details of the rental agreement as stated by the tenant. He said he offered her a good deal on her rent and now she doesn't want to move.
17. The landlord said that he has given the tenant a 3 month notice and he wants her to move. He stated that he is selling the property. He questions if he can't give a three month notice to his tenant's how would he ever get his property back?

Analysis

18. Section 18 of the *Residential Tenancies Act, 2018*, states that a landlord can give a tenant a written 3 month notice and the landlord is not compelled to give the tenant or this board a reason for the termination. The notice given to the tenant does meet the requirements as set out in the *Act*. As follows:

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.*

19. However the tenant raises a legitimate argument that this notice does appear to be directly linked to the request by the landlord, for her to sign a statement, to assist in the termination of another tenant's notice. The landlord called her at 1:26 and 1:30 and she said he was frustrated with her unwillingness to help him out. According to her he told her at that time that if she didn't help then she would be "out." Then 2 ½ hours later, with no further communication, she received a termination notice.
20. Section 29 of the Residential Tenancies Act, 2018, 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.

21. I accept the tenant's testimony and supplementary evidence, in view of the timeline of 2 ½ hours from the threat of her being out should she not comply, to receipt of a termination notice, I find that the landlord did give this notice in retaliation and the notice is therefore not valid.

Decision

22. The termination notice given to the tenant with a termination date of 31-August-2022 is not a valid notice.

Issue 2: Reinstatement of the Landlord's Right to Terminate

23. My finding that the termination notice dated 31-August-2022 is not valid shall not impede the landlord's right to terminate a tenancy. The landlord does have a right under Section 18 of the Act to terminate a tenancy in accordance with the Act and is not compelled to give the tenant or this board a reason for said termination.
24. A tenant does not have a right to security of tenure and Section 29 of the Act is not to be utilized for that purpose. This being said, that should the landlord serve the tenant with another notice, in the immediate time period after this decision has been issued, this notice could also be considered invalid and therefore a "cooling off" period shall be enforced. The landlord therefore shall not issue a Section 18 termination notice to the tenant prior to 01-October-2022, at which point he is once again authorized to exercise that right. This prohibition has no effect on the landlord's right to issue a termination notice for cause, as indicated in Sections 19 through 24 of the Act.

Issue 3: Hearing expenses reimbursed \$37.17.

25. The tenant submitted the receipts for \$20.00 for the cost of the application fee for the hearing (LL#04) as well as the cost of the prepaid registered mail \$17.17 (LL#05) and pursuant to policy 12.01, is entitled to reimbursement of those costs totaling \$37.17, from the landlord.

Summary of Decision

26. The termination notice issued to the tenant dated 31-August-2022 is invalid.
27. The landlord is prohibited from issuing the tenant a termination notice, under section 18 of the *Residential Tenancies Act, 2018*, until 01-October-2022.
28. The landlord shall reimburse the tenant for her hearing expenses totaling \$37.17.

July 19, 2022

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office