

Residential Tenancies Tribunal

Application 2022 No. 522NL

Decision 22-0522-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:56 PM on 02 August 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the tenant", participated in the hearing. The respondent, [REDACTED], hereinafter referred to as "the landlord", also participated.

Issues before the Tribunal

3. The tenant is seeking the determination of the validity of a termination notice issued to her on 22 June 2022.

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 21 of the *Residential Tenancies Act, 2018*.

Issue 1: Validity of Notice

Relevant Submissions

The Landlord's Position

6. The landlord stated that he had entered into verbal rental agreement with the tenant in January 2021. The agreed rent is set at \$600.00 and no security deposit was paid.

7. With her application, the tenant had submitted a termination notice, which the landlord stated he had the sheriff deliver to the tenant on 22 June 2022. That notice was issued under section 21 of the *Residential Tenancies Act, 2018* (notice where premises uninhabitable) and it had an effective termination date of that same day.
8. The landlord stated that he had issued that termination notice to the tenant for several reasons. He testified that the tenant is currently in rental arrears and that she has been paying her rent in "drips and drabs" since she moved in. He also complained that the electricity to the unit is currently disconnected and that it has been in that state for over a month now.
9. The landlord also complained that, in the summer of 2020, some of the windows at the rental unit were broken out and the tenant currently has them taped over with plastic. He also claimed that the front entrance door is chopped up.

The Tenant's Position

10. The tenant stated that she had taken over the lease at the property in March 2021, and not January 2021, as the landlord had claimed.
11. Regarding the issue of the disconnection of the electricity at the unit, the tenant stated that although her electricity is currently disconnected, it was not disconnected on 22 June 2022 when the landlord issued her the termination notice. She stated that the reason the electricity is currently disconnected is because the landlord had contacted Newfoundland Power on 27 July 2022 and requested that it be cut.
12. With respect to the windows and the doors, the tenant stated that that damage occurred during a previous tenancy and before she moved into the property.

Analysis

13. Section 21 of the *Residential Tenancies Act, 2018* states:

Notice where premises uninhabitable

21. (2) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where an action of, or a failure to act by, a tenant makes a residential premises unfit for habitation, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises effective immediately.

(3) In addition to the requirements under section 34, a notice under this section shall

(a) be signed by the person providing the notice;

(b) state the date 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

(c) be served in accordance with section 35.

14. With respect to the landlord's complaint that the tenant had not been paying her rent, as required, I pointed out to the landlord that if he wished to terminate the tenancy for that reason, he would have to issue the tenant a 10-day termination notice under section 19 of the *Act*. The tenant's failure to pay her rent goes no way towards making a unit unfit for habitation.

15. Regarding the electricity, although the electricity supply to the unit may be currently disconnected, at the hearing the landlord confirmed the tenant's assertion that it was not disconnected on 22 June 2022, the day the termination notice was issued. But if there was no issue with the electricity on 22 June 2022, a notice to vacate with immediate effect could not be given for that reason, on that date.

16. This leaves the issues of the door and the windows. The landlord stated that this damage was caused in the summer of 2020 and the tenant claimed that she did not even move into the unit until March 2021, some 7 months after that damage occurred. Of course, the landlord claimed that the tenant had moved in in January 2021, but even if that is true, that is still 4 months before this tenancy began. Although that damage may make a unit unfit for habitation, I have to conclude that the landlord has failed to demonstrate that that damage was caused "an action of, or a failure to act by, the tenant" as required by this section of the *Act*.

17. For these reasons, I find that the landlord did not have grounds, on 22 June 2022, to issue a termination notice under this section on the *Act*, and, therefore, that notice is invalid.

Decision

18. The termination notice issued to the tenant on 22 June 2022 is not a valid notice.

08 August 2022

Date


John R. Cook
Residential Tenancies Tribunal