

## Residential Tenancies Tribunal

Applications: 2022 No. 0785 NL  
2022 No. 0875 NL

Decision 22-0785-00

Jaclyn Casler  
Adjudicator

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### Introduction

1. The hearing was called at 11:03AM on 27 October 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the tenant", participated in the hearing, as did the respondent [REDACTED], who is hereinafter referred to as "the landlord".
3. The tenant submitted an affidavit of service (T#1) confirming that she served the landlord on 28 September 2022, and the landlord testified that he served the tenant notice of his counter claim a week later. The tenant and landlord confirmed service was received on the days claimed.
4. The details of the claim were presented as a month-to-month rental agreement that started 01 January 2022 with the tenant taking possession the day before. Monthly rent is set at \$750.00 and paid monthly on the tenant's behalf by government sources. A security deposit in the amount of \$525.00 was collected and the tenant submitted a copy of the written rental agreement (T#2).
5. 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

6. The tenant is seeking validity of termination notice determined.
7. The landlord is seeking 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 are sections 14 and 18 of the *Act*.

## **Preliminary Matters**

10. The landlord amended his claim and stated that he wishes to retain the full value of the \$525.00 security deposit against monies needed to repair damage in the rental premises after he regains possession.

### **Issue 1: Validity of Termination Notice**

#### **Vacant Possession**

##### Tenant's Position

11. The tenant testified that she believed the termination notice was issued to her as retaliation because she is trying to protect herself against the main floor tenants and her neighbours. The tenant referred to a series of photos of the interior of her rental premises that were submitted (T#3) and testified that she has involved the police. The tenant also testified that she has to change the "tape" around her house daily because it gets full of "chemicals".

##### Landlord's Position

12. The landlord testified that he has advised the tenant to contact the police if she believes she is being harassed. The landlord testified that he issued the termination notice (L#1) personally to the tenant on 07 June 2022 because he wants possession of his rental unit. The notice is a standard notice under section 18 of the *Act*, and the stated move out date is 30 September 2022.
13. The landlord is seeking an order for vacant possession of the rented premises

## **Analysis**

14. Section 18 of the *Act* allows a landlord to terminate a rental agreement on three (3) months notice without having to provide reasons to either the tenant or this Tribunal. The validity of such a notice 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.
15. Specific to a termination notice issued by a landlord under section 18 of the *Act* for a month-to-month tenancy such as this dispute, it is required to comply with each of the following to be deemed valid:

**Part 1:** 18(2)(b) of the *Act* requires that a termination notice be issued not less than 3 months before the end of a rental period where the residential premises is rented month to month.

**Finding:** The tenant in this dispute has a month to month rental agreement and rent is due monthly, paid on her behalf by government. As such, I find that a notice issued on 07 June 2022 is more than three months before the identified move out date of 30 September 2022.

**Part 2:** 18(9) of the *Act* requires that:

- (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.*

**Finding:** The landlord used the template section 18 notice made available by this tribunal and accurately filled in all required information.

**Part 3:** Section 34 of the *Act* requires that:

*Requirements for notices*

*34. A notice under this Act shall*

- (a) *be in writing in the form prescribed by the minister;*
- (b) *contain the name and address of the recipient;*
- (c) *identify the residential premises for which the notice is given; and*
- (d) *state the section of this Act under which the notice is given.*

**Finding:** The landlord used the template section 18 notice made available by this tribunal and accurately filled in all required information.

**Part 4:** Section 35 of the *Act* identifies that permitted means for service of documents.

**Finding:** The landlord served the notice personally to the tenant on the day that it was issued, and the tenant acknowledged service. Personal service is permitted by section 35(2)(a) of the *Act*.

16. Accordingly, I find that the Section 18 Termination Notice issued to the tenant on 07 June 2022, is a valid notice because it meets all requirements under the *Act* and it was also properly served. Furthermore, I found no evidence that the notice was served in retaliation as the tenant suggested in paragraph 11.

## **Decision**

17. The termination notice issued on 07 June 2022 is a valid notice.
18. The landlord's claim for an order for vacant possession of the rented premises is successful.
19. That the tenant shall pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

## **Issue 2: Security Deposit (\$525.00)**

### Relevant Submissions

20. The landlord testified that he wishes to retain the costs of the security deposit against the expenses he expects to incur once he regains possession of the rental premises. The landlord testified that the tenant has used duct-tape to secure what looks to be plastic across all windows, doors, heaters and the bottoms of all walls in the rental premises. Because of this, the landlord testified that he will be required to plaster the walls after removing the duct tape, and that he will then have to paint the entire premises to cover this plaster and also address any areas of mold that have started. The tenant denied damaging the rental premises and testified that the "tape" has not damaged the premises.

## **Analysis**

21. Section 14, sub 10, 12 and 14 of the *Residential Tenancies Act, 2018* states:
  - (10) *Where a landlord believes he or she has a claim for all or part of the security deposit,*
    - (a) *the landlord and tenant may enter into a written agreement on the disposition of the security deposit; or*
    - (b) *the landlord or the tenant may apply to the director under section 42 to determine the disposition of the security deposit.*

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*(12) A landlord who does not make an application in accordance with subsection (11) shall return the security deposit to the tenant.*

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*(14) Where a landlord does not make an application under subsection (11), he or she is not prohibited from making an application under section 42 other than an application with respect to a claim against the security deposit.*

22. From reviewing the photos provided by the tenant of the rental premises, it appears likely that the landlord will incur costs in excess of the security deposit to remove the "tape" and restore the rental premises. As however, the landlord has not yet provided 1) definitive proof of damage, 2) that the tenant has caused the damage, or 3) the costs to repair this damaged, he is not entitled to retain any portion of the security deposit at this time. The landlord can apply again to this tribunal at a later point if he finds that he has a subsequent claim to the deposit and cannot get the tenant to agree in writing on how to dispose of the \$525.00 collected.

### **Decision**

23. The landlord's claim to retain the security deposit does not succeed in any amount.

### **Issue 3: Hearing Expenses**

24. The landlord claimed the \$20.00 expense of applying for the hearing. As the landlord's claim has been successful, the tenant shall pay this expense.
25. The tenant also claimed the \$20.00 expense of applying for the hearing. As her claim has not been successful, this amount is not eligible for reimbursement.

## **Summary Decision**

26. The termination notice issued on 07 June 2022 is a valid notice.
27. The landlord is not entitled at this time to retain any portion of the security deposit collected.
28. The landlord is entitled to the following:
  - An order for vacant possession.
  - Payment of \$20.00 for hearing expenses.
  - Payment from the tenant for any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

27 October 2022

Date

Jaclyn Casler  
Residential Tenancies Tribunal