

Residential Tenancies Tribunal

Applications: 2022 No. 0975 NL

Decision 22-0975-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 11:04AM on 14 December 2022 via teleconference.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as "landlord1" and "landlord2" participated in the hearing. The respondent, [REDACTED], also participated in the hearing.
3. The landlord submitted an affidavit of service (L#1) confirming that she served the tenant by registered mail on 16 November 2022 and then served personally as well on 19 November 2022. A review of the tracking number associated with the registered mail confirms the package was never picked up, however, the tenant acknowledged personal service.
4. The details of the claim were presented as fixed term 12 month agreement that started on 01 November 2021 for which a copy of the written rental agreement was provided (L#2). Monthly rent was set at \$900.00 and a security deposit in the amount of \$600.00 was collected.
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 landlords are seeking an order for vacant possession.

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).
8. Also relevant and considered in this case is section 18 of the *Act*.

Preliminary Matters

9. The section 18 termination notice on file (L#3) was issued by the previous landlords for the rental premises purchased in late September 2022 by the current landlords. The tenant testified that she acknowledged receipt of this notice by email on the day it was issued (e.g., 29 August 2022).

Issue 1: Vacant Possession

Landlord's Position

10. Landlord1 testified that she understood the termination notice was served to the tenant on the day it was issued, 29 August 2022 (L#3). Landlord1 testified that the termination notice was issued two months prior to the end of the fixed term agreement (e.g., 31 October 2022) and three months prior to the stated move out date of 30 November 2022. Landlord1 testified that she made sure this notice was issued to the tenant as part of their closing documents for the sale of the rental premises.
11. Landlord1 testified that she and her husband repaired a number of outstanding items at their new property after the sale closed. Landlord1 testified that the tenant “*was wonderful...a very very nice lady*” who told them all about her concerns with the rental premises and the former landlords. Landlord1 testified that she and her husband officially moved into the rental premises on 14 October 2022.
12. Landlord1 testified that she and her husband took the tenant shopping in middle of October 2022 to purchase a new lockset for the rental premises and take her to lunch. It was at this meal, that the tenant allegedly communicated her desire to remain in the premises. Landlord1 testified that she then informed the tenant that she would review closing documents related to the sale of the premises and “*look at it again*” at the end of the tenant’s fixed term (e.g., 31 October 2022). Landlord1 testified further that it was arranged to discuss on 31 October 2022 with the tenant whether or not they would continue with the rental agreement.
13. Landlord1 testified that prior to attempting to host a tea that day, she and her husband decided to not continue the rental agreement. Landlord1 testified further that landlord2 went down to the tenant’s residence that evening to invite her for tea, and the tenant allegedly declared that “all future conversations must be in email”. Landlord1 testified that there were subsequent emails where she emphasized her commitment to enforcing the termination notice issued on 29 August 2022. Landlord2 testified in support of this chronology of events.

Tenant's Position

14. The tenant acknowledged receiving the 29 August 2022 termination notice by email from the former landlord. She testified that she understood the discussion at lunch in mid October 2022 with the landlords to mean that she could remain in the rental premises. The tenant testified that it was unfair of the landlords to only give her a one month notice to vacate (e.g., the emails from 31 October 2022 onward). The tenant testified that she has a new residence for the end of January 2023.

Analysis

15. 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.
16. 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 had a fixed term agreement that converted to month to month after it ended on 31 October 2022. As such, I find that a notice issued on 29 August 2022 is more than three months before the identified move out date of 30 November 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 former 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 former 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: Landlord1 appeared uncertain about service, but the tenant confirmed the notice was served electronically to her on the date it was issued by a former landlord. Electronic service is permitted by section 35(2)(f) of the *Act*.

17. Accordingly, I find that the Section 18 Termination Notice issued to the tenant on 29 August 2022 by the former landlords, was a valid notice when it was issued because it meets all requirements under the *Act* and it was also properly served.

Decision

18. The landlords are entitled to the following:

- An order of vacant possession;
- Payment by 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.

21 December 2022
Date

[Redacted]
Jaclyn Casler
Residential Tenancies Tribunal