

Residential Tenancies Tribunal

Applications: 2022 No. 01117 NL

Decision 22-1117-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 11:05AM on 31 January 2023 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the tenant" attended the hearing. He was supported by two representatives, [REDACTED] and [REDACTED], hereinafter referred to as "the tenant's representatives" during the hearing (T#1).
3. The respondent, [REDACTED] as represented by [REDACTED], and hereinafter referred to as "the landlord" also participated. The landlord identified herself as the superintendent for the rental premises and agent of the landlord proper.
4. The tenant's representatives submitted an affidavit of service (T#2) confirming the landlord was served on 10 January 2023 and proof of service was provided (T#3). The landlord confirmed service.
5. The details of the claim were presented as a month-to-month- agreement that started on 01 November 2021 for which an original written rental agreement was provided (T#4). Monthly rent is set at \$610.00, due on the first of the month and a security deposit in the amount of \$457.50 was collected.
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 tenant is seeking Validity of Termination notice determined.

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 landlord indicated that she has a counter claim application filed with this tribunal for an order of Vacant Possession (see application # 2023-0017-NL) for the same rental premises using the same termination notice as this application. The rental premises is located at [REDACTED], Apartment [REDACTED].

Issue 1: Validity of Termination Notice Determined.

Tenant's Position

11. The tenant submitted a copy of the section 18 termination notice received (T#5). It is a template notice made available from this tribunal. The notice is dated 22 September 2022 and identifies a move out date of 31 December 2022. The tenant testified that he received the termination notice on 05 October 2022, that someone knocked on his door and gave it to him.

Landlord's Position

12. The landlord testified that she served the termination notice to the tenant on the day that it was issued (22 September 2022) and that she would like possession back of the rental premises. She denied that tenant's testimony that he was served the notice on 05 October 2022 and reiterated that he was served the notice on 22 September 22. However, no supporting documentary evidence was provided.

Analysis

13. 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.

14. 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 4 parts 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 testified that he received the termination notice on 05 October 2022 and the landlord testified that she served the tenant on 22 September 2022. However, the landlord did not offer any supporting evidence for this claim which meant that I was unable to determine if indeed, the termination notice was served more than the required three months before 31 December 2022 (e.g., the move out date).

- *I find that this notice (dated 22 September 2022) does not comply with this part of the legislation.*

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. The landlord and tenant agreed that the notice was served personally to the door, which is accepted service and a stated move out date was duly identified. The landlord also properly signed her name, as the person issuing the notice. As previously noted above however, I was not able to determine if the notice was served “no later than the first day of a rental period.

- *I find that this notice (dated 22 September 2022) does not comply with this part of the legislation.*

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 tenant is identified incorrectly on this notice, addressed as "Dana Coles" and not the legal name found on the rental agreement of "Dana Cole" which was also confirmed during the tenant's Oath of Affirmation. Additionally, I note that the landlord identifies herself personally as the Landlord proper on this notice, failing to provide the landlord's legal business name as is noted on the written rental agreement.

- *I find that this notice (dated 22 September 2022) does not comply with this part of the legislation.*

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

Finding: The landlord and tenant agree that the termination notice was served by personally to the tenant's door. Personal service is an accepted means of service under section 35(2)(a) of the Act.

- *I find that this notice (dated 22 September 2022) complies with this part of the legislation.*

15. Accordingly, I find that the Section 18 Termination Notice (dated 22 September 2022) is not a valid notice, because as shown in paragraph 14, it failed to comply with 3 parts of the 4 part test for validity of a Section 18 Termination Notice.

Decision

16. The Section 18 Termination Notice (dated 22 September 2022) is not a valid notice.

01 February 2023

Date

Jaclyn Casler
Residential Tenancies Tribunal