

Residential Tenancies Tribunal

Applications: 2022 No. 0987 NL

Decision 22-0987-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:15 AM on 19 December 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the tenant", participated in the hearing.
3. The respondent, [REDACTED], hereinafter referred to as "the landlord", did not participate in the hearing.
4. An affidavit of service was provided by the tenant (T#1) confirming that the landlord was served electronically on 12 November 2022. Proof of service (T#2) was provided along with a screenshot of text messages between the landlord and tenant wherein the landlord confirmed her email address [REDACTED]).
5. The details of the claim were presented as a recently established month-to-month agreement that began on 15 September 2022. Monthly rent is set at \$650.00 and a security deposit in the amount of \$325.00 was collected. The tenant provided a screengrab of his text messages with the landlord wherein such terms were put in writing.
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

- The tenant is seeking validity of termination notice determined.

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* and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

9. The landlord was not present or represented at the hearing and I was unable to reach her by telephone at [REDACTED]. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*.
10. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, where the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as she has been properly served.
11. As the landlord was properly served, and any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.

Issue 1: Validity of Termination Notice Determined

Relevant Submissions

12. The rental premises is a newly constructed two apartment dwelling located at [REDACTED]. The tenant resides in the main floor apartment with the landlord. The bottom floor apartment is occupied by other tenants.
13. The tenant referred to two screen shots of text messages sent between himself and the landlord on 07 November 2022. The tenant referred to the first exchange with the landlord (T#5) and testified that he was instructed to leave the premises within two weeks. The tenant then referred to the second exchange with the landlord (T#6) wherein he relayed guidance from the Residential Tenancies Office to the landlord and she responded with a more detailed text response, clarifying the exact day that she expected the tenant to vacate.
14. The tenant testified that he pays rent by ETransfer and that he is concerned because the landlord has not yet accepted his rent for the month of November 2022.

Analysis

15. I accept that the landlord in this dispute wrote to the tenant on 07 November 2022 (T#5):

"You can find your own space asap, you have two weeks"
16. I also accept that the landlord responded later in the day, after the tenant informed her that the earlier notice was invalid, with the following:

"Here's your 2 weeks notice effective today month of November 07, 2022 till November 21, 2022 of your stay at this Address [REDACTED]."

17. I further accept that the tenant disputed these notices and informed his landlord that she must provide "at least three months notice" under the *Act*. While this is correct that a landlord must provide "not less than three months before the end of the term where the residential premises is rented from month to month" for a no cause, no reason notice under 18(2)(b) of the *Act*, there are other ways a tenancy can be ended.
18. Regardless, I find that the landlord by texting what she did, as shown on the two sections of text exchanges provided by the tenant (snippets of which are provided above), did not provide her tenant with a valid notice of the termination of his tenancy for three main reasons:
 - Different termination notices under the *Act* have specific criteria upon which validity of reason for issuance is determined – because the landlord in this dispute did not identify her authority for termination, I cannot assess the validity of her reasons for issuance.
 - Furthermore, the validity of the notice itself, is then judged against Section 34 of the *Act* which requires in part, that (d) "the section of this Act, under which the Act is given" must be identified. Because the landlord did not cite a section of the *Act* as her authority, her notice was not valid.
 - That the notice was validity serviced and received (e.g., by text) does not mean anything when the reasons for issuance and the means of issuance are not found to be valid.

Decision

19. The landlord did not issue a valid termination notice to the tenant on 07 November 2022.

21 December 2022

Date

Jaclyn Casler
Residential Tenancies Tribunal