

Residential Tenancies Tribunal

Applications: 2023 No. 0002 NL

Decision 23-0002-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:04AM on 01 February 2023 via teleconference.
2. The applicant, [REDACTED], as represented by [REDACTED], and hereinafter referred to as “the landlord” participated in the hearing.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant” participated in the hearing. She was supported by her housing support worker, [REDACTED], hereinafter referred to as “the tenant’s worker”.
4. The landlord submitted an affidavit of service, along with proof of service confirming that the tenant was served by registered mail on 06 January 2022 (L#1). A review of tracking associated with this mail indicates that both packages were picked on 13 January 2023 and the tenant confirmed receipt of service.
5. The details of the claim were presented as a month-to-month- agreement that started on 01 June 2022. Monthly rent is set at \$860.00, due on the first of the month and a security deposit in the amount of \$430 was collected. A copy of the written rental agreement was not provided
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 landlord is seeking an order of 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 is section 18 of the *Act* as well as Residential Tenancies Policy 07-01 General Information Notice of Termination.

Issue 1: Vacant Possession

Landlord's Position

10. The landlord is seeking to regain possession of the rental premises, unit [REDACTED], located at [REDACTED]. She submitted a copy of the termination notice issued to the tenant on 11 October 2022 (L#2). It is a custom termination notice used by the landlord. The landlord testified that this notice was served to the tenant on the day that it was issued by the Resident Manager for the building, who slipped it under the tenant's door.
11. After it was raised by the tenant, the landlord acknowledged that a second termination notice was issued to the tenant on 20 October 2022. This notice was a section 19 notice for non-payment of rent and it identified a stated move out date of 31 October 2022. The landlord testified that tenant arrears were then paid and that this section 19 termination notice was voided. The landlord referred to a written note from the Resident Manager of the building (L#3) and indicated that the Resident Manager is on standby if needed. The landlord testified that the Resident Managers' communication to the tenant was in relation to the section 19 notice that was issued, and unrelated to the section 18 notice that remained active.

Tenant's Position

12. The tenant testified that she can get out if she needs to, but that she thought that all termination notices issued to her had been cancelled. The tenant acknowledged receipt of the section 18 termination notice issued to her on 11 October 2022 and indicated that she received a subsequent termination notice related to payment of rent. The tenant's worker testified that she advised the tenant to get communications from the Resident Manager in writing, and referred to the same written note provided by the landlord which reads as follows:

"Unit [REDACTED] is not evicted as of Nov 3 2022"

13. The tenant's worker testified that she was surprised by the landlord's notice of service in early January 2023 as she thought all action against the tenant had been cancelled. She also testified, that had she known there was still an active termination notice against the tenant, she would have been working sooner at finding the tenant housing since the tenant is a client of a "End Homelessness" initiative.

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. 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.
15. Also relevant however, to this dispute, is the mutually agreed upon fact that the tenant was served a section 19 Termination notice AFTER receiving the section 18 Termination notice. Where the landlord argued that all communications to the tenant after this second notice was issued and then voided, were specific to the section 19 notice only, the tenant understood these communications to mean that ALL actions to terminate her rental agreement were “cancelled” because as written in the note from the Resident Manager, “Unit [REDACTED] is not evicted as of Nov 3 2022”.
16. Regardless, according to Residential Tenancies Policy 07-01 Notice of Termination General Information:

“If a termination notice is already in place and a second notice is issued by either party whereby the termination date is earlier than that specified in the first notice, then so long as this second notice is valid, the tenant is required to vacate on the date specified in the termination notice”.
17. Specific to this dispute, this means that the section 19 notice could have been potentially considered a valid notice had arrears not been paid and the landlord sought to obtain an order of vacant possession. That the landlord, as shown in this dispute, ended up voiding this termination notice after arrears were paid, has no impact on the potential validity of the section 18 notice that was issued on 11 October 2022. Consequently, I will return to imposing the four part test on this notice.
18. **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 on the first of each month. As such, I find that a notice issued on 11 October 2022 is more than three months before the identified move out date of 31 January 2023.

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 a custom notice, but nevertheless, 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 a custom notice, but nevertheless, 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 under the tenant's door on the day it was issued. Service under the door is permitted by section 35(2)(d) of the *Act*.

19. Accordingly, I find that the Section 18 Termination Notice issued to the tenant on 11 October 2022, is a valid notice because it meets all requirements under the *Act* and it was also properly served.

Issue 2: Hearing Expenses

20. 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.


Summary of Decision

21. 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.

06 February 2023

Date



Jaclyn Casler
Residential Tenancies Tribunal