

Residential Tenancies Tribunal

Application 2023-0005-NL
Application 2023-0196-NL

Decision 23-0005-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:45 p.m. on 03-April-2023.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, participated in the hearing. The tenant, [REDACTED], hereinafter referred to as “the tenant”, was also in attendance. The hearing was held via teleconference.

Preliminary Matters

3. The landlord submitted an affidavit stating that he served the tenant with notification of the hearing seeking vacant possession. He sent the hearing package on 17-March-2023 via registered mail ([REDACTED]). Tracking shows that the mail was not picked up. The tenant confirmed that she did not accept the mail. In accordance with *Residential Tenancies Act, 2018*, Section 35(5) registered mail is considered to be served on the fifth day after mailing. The tenant submitted her own application questioning the validity of the termination notice. Both applications were linked together and heard at the same time. The tenant served the landlord on 23-March-2023 electronically ([REDACTED]). The landlord confirmed that was a good address and states that he received the email containing the service documents. There are no issues with the service of documents.
4. The rental unit is a basement apartment with the tenant in the basement and the landlord residing upstairs. There is a rental agreement dating back to November 2017 with the tenant’s signature but no landlord signature. Both the landlord and the tenant agree that once the rental agreement ended in 2018, they continued on in a month to month tenancy.

Issues before the Tribunal

5. The landlord is seeking:
 - An order for vacant possession of the rented premises

The tenant is seeking:

- A determination of the validity of the termination notice issued to him by his landlord

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
7. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 18 and Section 29

Issue 1: Vacant Possession of the Rental Premises

Issue 2: Validity of Termination Notice

Relevant Submissions

8. The landlord stated that he gave the tenant a Landlord's Notice to Terminate – Standard on 15-December-2022 (LL#1). The tenant confirmed that she received it on that date. The tenant believes that the landlord gave the termination notice out of retaliation. She states that she contacted the fire department out of safety concerns. The landlord had moved his brother into the upstairs of the house with him, and his brother is on oxygen for medical reasons. The tenant could hear loud conversations between the landlord and his brother making reference to unsafe behaviors on the part of his brother involving the oxygen tank. The tenant felt concerned for her safety and contacted the fire department requesting an inspection of the unit upstairs. The tenant feels that the receipt of a termination notice the day following the visit from the fire department was a notice out of retaliation as she feels she is a great tenant of 6 years and the landlord had no reason to evict her.
9. The landlord states that he has a note from the fire department stating that there was no reason for concern from a safety perspective. The landlord asks to have his termination notice honored and to have the tenant removed from his unit as soon as possible.

Landlord's Position

10. The landlord stated that he gave a proper termination notice and wants his tenant to vacate the premises as soon as possible. He never had any concern for the safety of his house and the fire department confirmed the same.

Tenant's Position

11. The tenant feels that the termination notice was given out of retaliation for calling the fire department. She should not have to vacate her premises as she was just concerned for her safety and she states that she is a great tenant who is very quiet.

Analysis

12. I understand the tenants concern for her safety and accept why she contacted the fire department to investigate her concerns. The issue here is whether or not the landlord

gave a proper termination notice, and whether or not that termination notice was issued out of retaliation under section 29 of the Act.

13. Section 18 (2) of the Residential Tenancies Act, 2018 states;

A landlord shall give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises

(b) not less than 3 months before the end of a rental period where the residential premises is rented from month to month; and ...

14. Section 29.(1) of the Residential Tenancies Act, 2018 states;

A landlord shall not

(a) Terminate or give notice to terminate a rental agreement; or

(b) Directly or indirectly coerce, threaten, intimidate or harass a tenant or a member of a tenant's family,

in retaliation for, or for the purpose of deterring the tenant from, making or intervening in a complaint or application in relation to a residential premises.

(2) Where a tenant who is served with a notice of termination of a rental agreement believes that the landlord has contravened subsection (1), he or she may, not later than one month after receiving the notice, apply to the director under section 42 for an order declaring the rental agreement is not terminated.

15. The termination notice is a valid notice as it was given on 15-December-2022 to be vacated by 31-March-2023. The fixed rental agreement had expired in 2018 and the tenancy continued on as a month to month tenancy. A 3 month termination notice was required from the landlord and he met that obligation (LL#1).

16. If a tenant wants to question the validity of a termination notice under Section 29, then it has to be done within 1 month of receiving the termination notice. The tenant confirmed that she received the termination notice on 15-December-2022 and she did not make her application to the board until 17-February-2023. The landlord would have had to make and pay for her application on or before 15-January-2023 to be able to make a claim that the termination notice was for an invalid purpose.

Decision

(c) The landlord's claim for an order for vacant possession succeeds.

(d) The tenant's claim that she was evicted for invalid purposes cannot proceed as she did not meet the proper timeframe to make such a claim.

(e) The tenant shall vacate the premises immediately

(f) 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 3: Hearing expenses reimbursed \$42.94

- (g) The landlord is seeking reimbursement of the \$20.00 filing fee, cost of pre-paid registered mail \$13.44 and other miscellaneous costs of \$9.50 (receipts from Staples LL#2).

Summary of Decision:

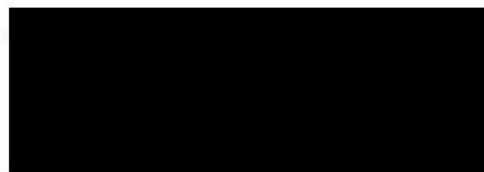
The tenant shall:

1. Pay the landlord \$42.94 as follows:
 - Hearing expenses \$42.94
2. Vacate the property immediately
3. 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.

The landlord:

1. Will be awarded an Order of Possession.

April 10, 2023 _____
Date



Pamela Pennell, Adjudicator
Residential Tenancies Office