

Residential Tenancies Tribunal

Applications: 2023 No. 0009 NL

Decision 23-0009-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:15 AM on 06 February 2023 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the tenant", participated in the hearing. The respondent, [REDACTED] hereinafter referred to as "the landlord" did not participate and was not represented at the hearing.
3. An affidavit of service was provided by the tenant (T#1) confirming that he served the landlord in person on 26 January 2022 by hand delivering notice of his claim to their office, located at [REDACTED].
4. The details of the claim were presented as a currently month-to-month rental agreement that started spring 2021. Monthly rent is set at \$625.00 POU, due at the first of the month and a security deposit in the amount of \$425.00 was collected.
5. In a proceeding under the *Residential Tenancies Act, 2018*, 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

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).
7. Also relevant and considered in this case are sections 19 and 24 of the *Act*.

Preliminary Matters

8. The applicant identified the landlord as [REDACTED]". I amended their name to their known legal name of [REDACTED]
[REDACTED]
9. The landlord was not present or represented at the hearing. I was able to contact [REDACTED], representative of the landlord prior to the hearing. She indicated that the landlord would not be participating. As the landlord was properly served, and any further delay in these proceedings would unfairly disadvantage the tenant, I proceeded with the hearing in her absence.

Issue 1: Validity of Termination Notice Determined

Relevant Submissions

10. The tenant stated that he is working with "[REDACTED]" and that he made this application because he did not want an eviction on his file. He submitted a copy of the termination notice received (T#2), and testified that he found it by the inside of his door in the morning of 02 January 2023, after likely receiving it the night before. The tenant testified that he only had a day (as a result of the holidays) to contact staff prior to the stated move out date of 05 January 2023. He read the first paragraph of the termination notice into the audio record of the hearing. In doing so, the tenant stated that he was issued the termination notice under "section 19" of the *Act* for reasons of "peaceful enjoyment".

Analysis

11. Section 19 of the *Residential Tenancies Act, 2018* states:

Notice where failure to pay rent

19. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),

...

(b) where the residential premises is

(i) rented from month to month,

(ii) rented for a fixed term, or

(iii) a site for a mobile home, and

the amount of rent payable by a tenant is overdue for 5 days or more, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 10 days after the notice is served on the tenant.

(2) Notwithstanding subsection (1), where the tenant pays the full amount of the overdue rent, including a fee under section 15, before the date specified in the notice under paragraph (1)(a) or (b), the rental agreement is not terminated and the tenant is not required to vacate the residential premises.

12. Specific to the termination notice received by the tenant in this dispute, it states that it is a “Notice when a tenant fails to comply with peaceful enjoyment” which is a reason that can be cited for termination notices issued under section 24 of the Act, but not section 19. Also related to this notice, it states that it was issued on 30 December 2022 but the tenant testified it was likely served on 01 January 2023, two days late. Such service, does not satisfy the “not less than 5 day” requirement between issuance and move out under section 24 of the Act.
13. Consequently, I find that this notice is invalid because it does not accurately cite the section of the Act under which it is issued (e.g., section 19 of the Act relates to failure to pay rent only) and it also does not provide the required time frame for termination under section 24 of the Act, the ACTUAL section of the Act that was referenced with the landlord’s use of the phrase “peaceful enjoyment”.

Decision

14. The termination notice dated 30 December 2022 is not valid.

09 February 2023

Date

Jaclyn Casler
Residential Tenancies Tribunal