

Residential Tenancies Tribunal

Applications: 2023 No. 0148 NL

Decision 23-0148-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 11:17AM on 22 March 2023 via teleconference.
2. The applicant, [REDACTED] as represented by [REDACTED] [REDACTED] and hereinafter referred to as "the landlord" participated in the hearing. As did the respondent [REDACTED].
3. The landlord submitted an affidavit of service (L#1) confirming that the tenant was served by email on 10 March 2023. Proof of service to [REDACTED] was provided and the tenant confirmed service.
4. The details of the claim were presented as an originally fixed term 12 month agreement that started on 01 October 2020 for which a copy of the written rental agreement was provided (L#2). Monthly rent is \$750.00, due on the first of the month and a security deposit in the amount of \$562.50 was collected.
5. 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

6. The landlord is seeking an order for vacant possession.

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 are sections 18 and 19 of the *Act*.

Preliminary Matters

9. The parties agreed that a section 19 termination notice was issued to the tenant on 23 January 2023 and that rental arrears were not paid by the “10 day” stated move out date. A copy of this notice was not provided. Both parties also agreed that arrears on the tenants account was paid by 17 February 2023. The landlord agreed that her application to this office was made on 15 February 2023.

Issue 1: Vacant Possession

Landlord's Position

10. The landlord referred to the custom section 18 termination notice issued to the tenant on 28 October 2022 (L#3). She stated that the notice was served to the tenant by courier and that the notice provides a stated move out date of 31 January 2023. The landlord testified that she made an application to this office on this notice, and not the section 19 notice because the property owner wants their property back.

Tenant's Position

11. The tenant acknowledged the section 18 termination notice issued in October 2022. From conversations with representatives from Homelessness Newfoundland, the tenant testified that he believes the section 19 notice issued in January 2023 voided out the section 18 notice issued in October 2022. The tenant testified that he was surprised by landlords' notice of this hearing because he felt they were “dredging up” old issues. The tenant testified that there have been various issues in the rental premises and that all rent is now paid.

Analysis

12. 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.
13. Specific to this dispute, both parties agreed that the tenant was issued a section 19 termination notice on 23 January 2023 after receiving a section 18 notice on 28 October 2022 with a 31 January 2023 termination notice. This means that the stated move out date on the section 19 notice exceeded the stated move out

date on the section 18 notice. In accordance with Residential Tenancies Policy 07-01:

"If a termination notice is already in place and a second notice is issued by the same person whereby the termination date is later than that specified in the first notice, then the person issuing the second notice has thereby indicated that they are intending the tenancy to be extended to the date set out in the second notice. The party receiving this second notice is no longer required to abide by the termination date set out in the first notice and the termination date in the second notice is the date that the tenant is required to vacate. The person who served the 2 notices cannot have the first notice enforced."

14. Consequently, I find the termination notice issued on 28 October 2022 to be invalid and that the landlord's request for vacant possession does not succeed.

Decision

15. The termination notice issued on 28 October 2022 is not a valid notice.

16. The landlord's claim for vacant possession is not successful.

27 March 2023

Date

Jaclyn Casler
Residential Tenancies Tribunal