

Residential Tenancies Tribunal

Application 2023 No. 637NL
Application 2023 No. 666NL

Decision 22-0637-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:49 PM on 15 August 2023 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the tenant", participated in the hearing. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as "landlord1" and "landlord2", respectively, were also in attendance.

Issues before the Tribunal

3. The tenant is seeking a determination of the validity of a termination notice issued to her on 04 July 2023.
4. The landlords are seeking the following:
 - An order for a payment of rent in the amount of \$3150.00, and
 - An order for vacant possession of the rented premises.

Legislation and Policy

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

Preliminary Matters

7. Landlord2 amended the application at the hearing and stated that they were now seeking a total payment of \$4350.00 in rent.

Issue 1: Rent - \$4350.00

Relevant Submissions

The Landlords' Position

8. The landlords stated that they had entered into a verbal rental agreement with the tenant in May 2021. The agreed rent was set at \$600.00 per month. No security deposit was paid.
9. Landlord2 stated that in the year 2023, they had only received 2 rental payments from the tenant: \$300.00 in January 2023, and \$300.00 in February 2023. In the year 2022, she testified that she had received a payment of \$150.00 in August 2022, and another payment of \$300.00 in December 2022.
10. The landlords calculate that the tenant now owes \$4350.00 and they are seeking an order for a payment of that amount.

The Tenant's Position

11. The tenant acknowledged that she had only paid \$600.00 in rent for 2023. With respect to the year 2022, though, she claimed that she had paid a total of \$1550.00, and not \$450.00, as claimed by the landlords. \$600.00 of that amount was paid in January and February 2022, and the remaining \$950.00 was paid in the fall of 2022.
12. The tenant stated that when she first moved into the unit she was married to the landlords' son, and they were both living together at the rental unit. There was no issue with rent payments during that year. She stated that in 2022 she was hospitalized, and was taken off work, and that her husband was also not working during this period. She claimed that landlord2 told them not to worry about paying their rent until their family situation was sorted. She also claimed that landlord1 had told her in the summer of 2022 to pay "what they could, when they could".
13. In October 2022, the tenant stated that her relationship with the landlords' son broke down and he moved out of the unit. She stated that during that month, landlord1 demanded that she pay the \$600.00 rent or leave the apartment.
14. The tenant claimed that she does not owe the landlords any rent, and she gave 2 arguments.
15. First, she claimed that as the rent was reduced to a payment of "what you could, when you could" in August 2022, the demand for a payment of \$600.00 in rent for October 2022 by landlord1 amounted to an illegal rental increase.

16. Secondly, at the hearing, the tenant recited the following subsections of section 7 of the *Residential Tenancies Act, 2018*:

Provision of rental agreement and information

7. (3) Where a landlord and tenant enter into an oral or implied rental agreement, the landlord shall provide the tenant with a written notice containing the information prescribed in the regulations within 10 days after entering into the rental agreement, and where requested by the landlord, the tenant shall sign an acknowledgement of receipt.

(4) Notwithstanding the terms of a rental agreement, where a landlord has not complied with subsection (2) or (3), the tenant's obligation to pay rent is suspended and the landlord shall not require the tenant to pay rent until the landlord complies with subsection (2) or (3).

17. The tenant testified that she had made the landlords aware of this section of the Act, and she informed them that she would be withholding her rent, as permitted under subsection 7.(4), until they came into compliance with subsection 7.(3).

Analysis

18. There is no dispute that this is a verbal rental agreement, and there is no dispute that the landlords had not provided the tenant with a written notice containing the information contained in the *Rental Agreement Notice Regulations*, which read as follows:

Contents of notice

2. Where a landlord and tenant enter into an oral or implied rental agreement, the written notice required under subsection 7(3) shall include

(a) the legal names of the landlord and the tenant;

(b) the landlord's telephone number, electronic address and civic address where documents may be received, delivered or served by the tenant;

(c) where the landlord has an agent or another person who is responsible for the residential premises, the name, telephone number, electronic address and civic address of the agent or other person where documents may be received, delivered or served by the tenant;

(d) where available, the tenant's telephone number and electronic address where documents may be received, delivered or served by the landlord;

(e) the civic address of the rental unit;

- (f) the date on which the rental agreement was entered into;
- (g) the statutory conditions in section 10;
- (h) the date on which the tenancy starts;
- (i) whether the rental agreement is from week to week, month to month or for a fixed term;
- (j) where the rental agreement is for a fixed term, the termination date of the tenancy;
- (k) the amount of rent payable for a specified period and the day within that specified period upon which rent is due;
- (l) the amount of the security deposit paid and the date on which it was paid; and
- (m) any other terms and conditions of the rental agreement.

19. The landlords complained that the tenant had not informed them that she was withholding rent for this reason, and they denied that she had requested that they provide her with such a written notice. Be that as it may, I find that as there is no requirement under subsections 7.(3) or 7.(4) that the tenant do so, these complaints do not diminish the force of the tenant's argument.
20. As the landlords had not provided such a written notice of the verbal rental agreement, as required by the *Regulations*, I have to agree with the tenant that her obligation to pay rent has been suspended, and she is not required to pay rent until such time as such a notice has been issued to her.

Decision

21. The tenant's obligation to pay rent has been suspended.
22. The landlords' claim for an order for a payment of rent does not succeed.

Issue 2: Vacant Possession of the Rented Premises

Issue 3: Determination of Validity of Termination Notice

Relevant Submissions

The Landlords' Position

23. With their application, the landlords submitted a copy of a termination notice which landlord2 stated they posted to the tenant's door on 21 June 2023, even though it is dated 04 July 2023. That notice was issued under section 19 of the

Residential Tenancies Act, 2018 and it had an effective termination date of 21 July 2023.

24. The landlords stated that the tenant has not moved out, as required, and they are seeking an order for vacant possession of the rented premises.

The Tenant's Position

25. The tenant stated that she found the notice posted to her door on 04 July 2023.
26. The tenant argued that this notice was not valid, as she was under no obligation to pay rent, as she had argued in the previous section.

Analysis

27. 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.

28. I agree with the tenant on this point. As she was under no obligation to pay rent, as the landlords had not provided with a written notice of their verbal rental agreement, in conformity with the *Regulations*, her rent was not, in fact, overdue on the date the notice was issued, whether that was 21 June 2023 or 04 July 2023. Therefore, the termination notice issued to her is not a valid notice.

Decision

29. The termination notice, dated 04 July 2023, is not a valid notice.
30. The landlords' claim for an order for vacant possession of the rented premises does not succeed.

Summary of Decision

31. The tenant's obligation to pay rent has been suspended.
32. The landlords' claim for an order for a payment of rent does not succeed.
33. The termination notice, dated 04 July 2023, is not a valid notice.
34. The landlords' claim for an order for vacant possession of the rented premises does not succeed.

22 August 2023

Date

[Redacted]
John R. Cook
Residential Tenancies Tribunal