

Residential Tenancies Tribunal

Application 2023-0720-NL

Decision 23-0720-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:47 p.m. on 6-September-2023.
2. The applicants, [REDACTED] (Applicant 1 and spokesperson), [REDACTED], [REDACTED] and [REDACTED], hereinafter referred to as “the tenants”, participated by teleconference.
3. The respondent, [REDACTED], represented by [REDACTED], hereinafter referred to as “the landlord”, participated by teleconference.

Preliminary Matters

4. There was initially a written monthly fixed agreement that commenced on 1-September-2015. The tenants all moved in at different times. A new term agreement was signed on 19-June-2022. Rent is \$1500.00 per month, due on the first of each month. A security deposit of \$700.00 was paid on 12-July-2016. The new owner took over the property on 10-July-2023 and retained [REDACTED] to manage the property on his behalf.
5. The applicants stated that they served the landlord with the notice of hearing electronically by email to: [REDACTED] on 25-August-2023 (TT#1). The landlord’s representative confirmed receiving the document on that day. In accordance with the *Residential Tenancies Act, 2018* this is good service.

Issues before the Tribunal

6. The tenants are seeking:
 - A determination of the validity of a termination notice issued on 1-August-2023.

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*.

8. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 18; Notice of termination of rental agreement and Section 29; Termination for invalid purpose.

Issue # 1: Validity of Termination Notice

Relevant Submissions

9. The tenants submitted a copy of a termination notice issued to them on 1-August-2023 to vacate on 31-October-2023 under Section 18 of the *Residential Tenancies Act, 2018* (TT#2).

Tenant's Position

10. The tenant's stated that they feel that the termination notice was given out of retaliation when they refused to accept a rent increase from the new home owner and landlord. Applicant 1 stated that they were amenable to the rent increase, but they requested a proper 6 month notice, which she stated is required under the *Act*.
11. Applicant 1 testified that on 30-July-2023, the new home owner called all tenants and advised that rent would increase from \$1500.00 per month to \$2200.00 effective immediately. Applicant 1 testified that when she told the landlord that they were entitled to 6 months' notice, he threatened them by stating that if they do not want to comply with his terms, they could give him a notice of termination or, alternatively he could serve them with a notice of termination. The tenant's submitted a copy of text messages to support their claim (TT#3).
12. The tenant's stated that they have resided at the property for many years and they want to stay there. They also stated that they are amenable to the rent increase but they feel they are entitled to the 6 month notice as per section 16 of the *Act*.
13. Applicant 1 stated that the landlord had no reason to give the termination notice as he was willing to sign a new fixed term with them and she stated that her and the other tenant's feel that the notice was given out of retaliation.

Landlord's Position

14. The landlord's representative stated that her Company was hired by the new home owner on 1-August-2023 and she was asked to give a standard 3 month termination notice. Outside of that, she testified that she is unaware of happenings between the owner and the tenants.

Analysis

15. The relevant subsections of section 18 of the *Residential Tenancies Act, 2018* state:

Notice of termination of rental agreement

18(2) 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

18 (9) In addition to the requirements under section 34, a notice under this section shall

(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.

16. However, section 29 of the *Residential Tenancies Act, 2018* also states:

Termination for invalid purpose

29(1) 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, no later than one month after receiving the notice, apply to the director under section 42 for an order declaring that the rental agreement is not terminated.

17. I find that the landlord did meet the requirements of the *Act* when issuing the termination notice from a timeline perspective and the tenant's made application within the 1 month period as stated above.

18. I find that the tenant's showed that the new home owner and landlord was willing to continue the tenancy with them as he wanted to sign a new rental agreement after he took over the property. The landlord was not available to dispute this and his representative testified that her Company was not privy to any conversations that had previously occurred. The landlord's representative testified that she was asked to issue a standard 3 month termination notice and that is what she did.

19. I accept the tenant's testimony and supporting evidence (text messages TT#4), which show that both parties had discussed the terms of a new rental agreement and as such a continuation of the tenancy. I find that once the tenants disagreed with the terms of the new rental agreement, namely a rent increase, the landlord followed through with his threat of a termination notice.

20. I find that the termination notice given on 1-August-2023 was given out of retaliation for a tenant attempting to secure their rights provided for in section 16 of the *Residential Tenancies Act, 2018*.

Decision

21. I find the termination notice issued on 1-August-2023 to vacate on 31-October-2023 under Section 18 of the *Act* is not a valid notice.

Issue #2: Reinstatement of the Landlord's Right to Terminate

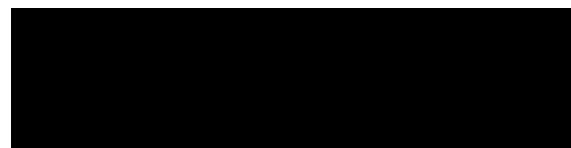
22. Despite my finding that the termination notice issued to the tenant on 1-August-2023 was given for an invalid purpose, as contemplated under section 29 of the *Act*, it has to be recognized that landlords in this province do have the right to terminate tenancies, as outlined in section 18, without having to provide reasons to either the tenant or this Tribunal.
23. Tenants in this province do not have a right to security of tenure and section 29 of the *Act* ought not to be utilized as a means to gain such security. However, it would seem to be for an equally invalid purpose if the landlord were to issue another section 18 notice to the tenants, say, the day after this decision was released (or 2 days after, etc.). Some balance must be struck. I find in accordance with section 47(1)(p) that it is appropriate that there be a "cooling off" period and I therefore order that the landlord is prohibited from issuing the tenants another termination notice under section 18 of the *Act* until 01 December 2023, at which point he is once again authorized to exercise that right. This prohibition has no effect on the landlord's right to issue a termination notice for cause, as indicated in sections 19 through 24 of the *Act*.

Summary of Decision:

24. The termination notice issued on 1-August-2023 is not a valid notice.
25. The landlord is prohibited from issuing to the tenants a termination notice under section 18 of the Residential Tenancies Act, 2018 before 1-December-2023.

September 15, 2023

Date


Pamela Pennell, Adjudicator
Residential Tenancies Office