

Residential Tenancies Tribunal

Application 2023 No. 758NL

Decision 22-0758-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:03 AM on 12 September 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", was 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 01 July 2023.

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this case are sections 18, 34, and 35 of the *Residential Tenancies Act, 2018*.

Issue 1: Validity of Termination Notice

Relevant Submissions

The Tenant's Position

6. The tenant stated that she had entered onto a 1-year, fixed-term rental agreement with the landlord, commencing on 01 December 2020, and she was permitted to move in on 15 November 2020. The agreed rent was set at

\$1250.00 per month, and the tenant writes on her application that she had paid a security deposit of \$800.00.

7. The tenant stated that on 26 June 2023, the landlord had sent a new lease for her to sign, and a copy of that new agreement was submitted with her application. This new agreement was supposed to run for 1 year, commencing 01 July 2023, through to 01 August 2024, and the rate of rent would increase to \$1400.00.
8. The tenant testified that she had questioned the landlord on the validity of the increase of rent in this new lease, and she pointed out to him that he was supposed to provide her with a 6-month notice of rental increase. In response, the landlord sent the tenant an e-mail on 01 July 2023, at 7:53 PM, in which he writes that he is "making some changes with our property on [REDACTED]". He continues: "Please consider this your three months notice and we will be taken possession on or before October 1st, 2023."
9. The tenant is questioning the validity of that notice.

The Landlord's Position

10. The landlord claimed that he had provided the tenant with a 6-month notice of rental increase, by text-message, on 27 February 2023.
11. With respect to the termination notice, the landlord claimed that he had followed the *Residential Tenancies Act, 2018* and he had provided the tenant with the required 90-days notice. With respect to the manner in which the notice was sent, he pointed out that on several occasions he had received termination notices from his other tenants, by e-mail or by text-message, and he questioned why landlords could not do the same. He asserted that the *Residential Tenancies Act, 2018* is biased against landlords.

Analysis

12. Section 18 of the *Residential Tenancies Act, 2018* outlines the requirements that both landlords and tenants must follow in terminating rental agreements, and for the purposes of this application, the relevant subsections 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

...

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

- (a) be signed by the person providing the notice;*
- (b) be given not later than the first day of a rental period;*
- (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.*

and section 34 of the Act states:

Requirements for notices

34. A notice under this Act shall

- (a) be in writing in the form prescribed by the minister;*
- (b) contain the name and address of the recipient;*
- (c) identify the residential premises for which the notice is given; and*
- (d) state the section of this Act under which the notice is given.*

13. I pointed out to the tenant and the landlord at the hearing that the termination notice issued by the landlord was defective in several ways and was therefore not valid.
14. First, the notice is not in the prescribed form, as required by s. 34.(a) and it is missing some of the essential information that is included on that form. For instance, and this would be a second point, it does not state, as required by s. 34.(d), under which section of the Act the notice was issued.
15. If this “90-day notice” was intended be a section 18 notice, it is defective in a couple of other ways. So, third, as this was a monthly tenancy, where rent is due on the first day of each month, then the last day of a rental period would fall on the last day of month and s. 18.(9)(c) states the specified termination date must fall on one of those days. But in the landlord’s notice, he writes that the tenancy is ending on 01 October 2023, the first day of the rental period—he should have written 30 September 2023, or 31 October 2020, 30 November 2023, etc.

16. A fourth point: although section 35 of the *Act* does permit both landlords and tenants to serve documents, including termination notices, electronically, the restriction stated at s. 35.(6) must be heeded:

Service of documents

35. (2) A notice or other document under this Act other than an application under section 42 shall be served by a landlord on a tenant by

...

(f) sending it electronically where

(i) it is provided in the same or substantially the same form as the written notice or document,

(ii) the tenant has provided an electronic address for receipt of documents, and

(iii) it is sent to that electronic address

...

(6) For the purpose of this section, where a notice or document is sent electronically, it shall be considered to have been served on the day it is sent, if the document is sent by 4 p.m., or the next day that is not a Saturday or holiday, if the document is sent after 4 p.m.

As this notice was sent to the tenant on 01 July 2023, a Saturday, at 7:53 PM, it is only considered served on Monday, 03 July 2023, as 02 July 2023 was a Sunday. But on 03 July 2023, the earliest termination date the landlord could have specified in a termination notice under this section of the *Act* would have been 31 October 2023.

Decision

17. The termination notice issued to the tenant, dated 01 July 2023, is not a valid notice.

19 September 2023

Date

John R. Cook
Residential Tenancies Tribunal