

Residential Tenancies Tribunal

Application 2023-0823-NL

Decision 23-0823-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:06 a.m. on 04-October-2023.
2. The applicants, [REDACTED] and [REDACTED], represented by [REDACTED], hereinafter referred to as “the tenant,” she attended by teleconference.
3. The respondents, [REDACTED] and [REDACTED], represented by [REDACTED], hereinafter referred to as “the landlord” he attended by teleconference.
4. The landlord presented a witness, [REDACTED], who is the Real Estate Agent for the property, hereinafter referred to as “the landlord’s witness,” she attended by teleconference.

Preliminary Matters

5. The tenant provided an affidavit (TT#01) stating that the landlord was served notice of today’s hearing electronically on 01-September-2023. It was determined during the hearing, that the tenant informed the landlord that she had opened a claim on that date, however, the hearing package was not sent until 12-September-2023. The landlord confirms receipt of the package at that time. This is good service and the hearing continued.

Issues before the Tribunal

6. The tenant is seeking
 - Validity of termination notice

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 19: Notice where failure to pay rent, Section 20: Notice where material term of agreement contravened and Section 34: Requirements for notices.

Issue 1: Validity of termination notice

Tenant's Position

9. The tenant submitted their rental agreement (TT#02), she states that rent is \$4,000.00 each month due on the first day of the month. They have a term agreement from 01-August-2023 – 31-July-2024. They paid a security deposit of \$3,000.00 on 12-June-2023 and she believes that the landlord is still in possession of the deposit.
10. The tenant explains that she received a termination notice (TT#03), the notice is in letter form and is titled “Eviction Notice” the subheadings are “Section 19 – Failure to Pay Rent and Section 20 – Material Breach by Tenant.”

It states that “as of August 31st, 2023 the tenants are served an eviction under section 19 and section 25 of the landlord tenancy act...”

11. The tenant acknowledges that she was in violation of both of these issues, however, she rectified both concerns in a timely manner as soon as the issues were raised and that she never received formal notice of these issues.

Section 19

12. The tenant stated that there were issues at the start of her tenancy with her rent payments. She said that her initial payments were coming from Tangerine, because the payments were going to a company, Tangerine put a hold on the payment, this hold is still on those funds.
13. She had ongoing conversations with the landlord's witness and as the payment did not go through, she then availed of other income and made the payments, she provided a rent ledger below. She said that the payments then came from CIBC and they had a maximum amount permitted to be sent in an e-transfer, so she had to make multiple payments to pay the full amount of rent.
14. At that time, she decided that she would pay the rent in advance of the next month, she made payments on the 15th and the 30th so that the rent would be to the landlord before the due date of the 1st.
15. The tenant said that rent was paid for both August and September before her eviction date and therefore the notice should be invalid. See ledger below:

Rent ledger
2023-0823-NL

Date	Action	Amount	total
20-Jun-23	damage deposit	3000.00	3000.00
20-Jun-23	damage deposit payment	-1500.00	1500.00
29-Jun-23	damage deposit payment	-1500.00	0.00

1-Aug-23	rent due		4000.00	4000.00
15-Aug-23		payment	-2000.00	2000.00
30-Aug-23		payment	-2000.00	0.00
30-Aug-23		payment	-1000.00	-1000.00
30-Aug-23		payment	-800.00	-1800.00
30-Aug-23		payment	-200.00	-2000.00
31-Aug-23		payment	-2000.00	-4000.00
1-Sep-23	rent due		4000.00	0.00
1-Oct-23	rent due		4000.00	4000.00

16. She explained that she made her October payment just prior to the hearing on 04-October-2023.

Section 20

17. The tenant acknowledges that she only informed the landlord that she had a cat. She accepts that her ownership of the dog was in breach of part 11 of the rental agreement (TT#02). She explains that she received a text from the landlord's witness on 26-August-2023 asking if they had a dog, as there was a complaint of barking. She confirmed that they did have a dog.

18. She explains that although she was not given formal notice to rectify this situation, she did contact a local agency and made arrangements to surrender the dog. She said that the dog went into foster care on 01-September-2023, they took the dog for a visit on 06-September-2023 but did not bring him inside the home and that he was subsequently adopted. She states that under the *Residential Tenancies Act, 2018*, that she was to be given notice to fix the issue in a timely manner and that although she wasn't given this notice, she did rectify the issue in a reasonable amount of time.

19. The tenant also said that when she was informed that the landlord had an issue with the code in the front door being changed, she immediately changed the code back to the original code. She said that she recalls speaking to the landlord's witness, who gave her the code, and recalls she was told she could change the code when she took possession.

Landlord's Position

20. The landlord also provided his copy of the rental agreement (LL#01), he confirms the details of the agreement as stated by the tenant and confirms that the security deposit was paid to the Real Estate Agent who are managing the property and that he is in possession of this deposit.

Section 19

21. The landlord stated that the tenant breached the material term of the contract, she did not pay her rent when it was due, she had a dog living on the premises who was not permitted and she changed the lock on the front door. He states that these breaches of the contract nullify the contract and that the tenant should have to move.

22. The landlord stated that he was informed at the end of August of the issues around rent payments had occurred. He submitted into evidence the ongoing text communication with his Real Estate Agent and the tenant (LL#02). He also submits a breakdown of the highlights of this communication (LL#03), he furthers that the tenant was contacted 7 times concerning issues with the rent payment during the month of August. He takes issue with the tenant changing the rent payment schedule to twice a month and believes that she does not have the right to change this schedule. The landlord also states that although the tenant has stated that she paid October's rent today, which is late, he has not received this payment.
23. The landlord's witness confirms that there was ongoing communication with the tenant concerning the unpaid rent and that there were 7 times that she reached out seeking the payments. She confirms that by the end of August, both August and September were paid in full.

Section 20

24. The landlord states that on 26-August-2023 that he received a complaint from a neighbor who said that there is a dog barking at the house. The landlord checked with his witness and it was confirmed that the tenant had a dog, which is in violation of part 11 of the rental agreement (LL#01).
25. The landlord's witness confirms that she spoke with the tenant after the complaint and questioned whether she had a dog and that the tenant did state she had a dog and cat.
26. The landlord stated that after this issue, in mid-September, it came to his attention that the tenant had changed the code to the lock system in the front door. He said that in accordance with the *Residential Tenancies Act, 2018*, the tenant is not permitted to change the lock and she is also in violation of breach of material term for this issue.
27. The landlord's witness was not able to recall with certainty the conversation with the tenant concerning the code to the front door.

Analysis

28. The termination notice in question is given for two different causes. The first cause is the Section 19 notice for failure to pay rent. During the tenant's testimony she raised the point that the notice is not valid because her rent was paid in full prior to the termination date of 30-September-2023. Both parties agree that the rent was paid in full before 31-August-2023. This section of the Act reads as follows:

Notice where failure to pay rent

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

(a) where the residential premises is rented from week to week and the amount of rent payable by a tenant is overdue for 3 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 3 days after the notice is served on the tenant; and

(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.

29. I find that the tenant is correct in her assessment that the notice is no longer valid and her agreement is not terminated because she did pay the past due rent in full before the termination date.
30. The second reason for termination is Section 20.(2), breach of material term, the Residential Tenancies Act, 2018 is as follows:

Notice where material term of agreement contravened

20. (2) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes a material term of a rental agreement, the landlord may give the tenant written notice of the contravention, and if the tenant fails to remedy the contravention within a reasonable time after the notice has been served, the landlord may give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises.

31. The tenant raised the concern that she was never given written notice to correct the violation of a material term, as stated in the *Act*, it is mandatory that the landlord first inform the tenant that they have breached the contract and then give them a reasonable time to correct the breach. The landlord did not adhere to that requirement. Additionally, had they served the tenant with written notice, I agree that the tenant corrected this issue in a timely manner. The issue with the coding on the door is not considered, as this happened after the notice, however, this issue was also corrected immediately.
32. Further to this, as shown in paragraph 10, the notice (TT#03) is in letter form and is titled "Eviction Notice" the subheadings are "Section 19 – Failure to Pay Rent and Section 20 – Material Breach by Tenant."

It states that "as of August 31st, 2023 the tenants are served an eviction under section 19 and **section 25** of the landlord tenancy act..."

33. The citing of Section 25: Application for certificate, is clearly a slip of the pen. However, in the *Residential Tenancies Act, 2018*, the landlord must state the section under which the notice is given, as the notice is given under section 25 not section 20 as intended, this is another reason why the notice does not meet the requirements of the *Act*.

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.**

34. I find that the termination notice given to the tenant is not valid.

Decision

35. The termination notice dated 31-August-2023 is not valid.

October 10, 2023

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office