

Residential Tenancies Tribunal

Application 2023-0850-NL

Decision 23-0850-00

Seren Cahill
Adjudicator

Introduction

1. Hearing was called at 9:05 a.m. on 30-October-2023.
2. The applicant, [REDACTED], attended by teleconference alongside [REDACTED] of [REDACTED] who assisted him in the presentation of his evidence. [REDACTED] submitted the appropriate form naming [REDACTED] as his authorized representative. Hereinafter [REDACTED] will be referred to as "the tenant."
3. The respondent, [REDACTED], attended via teleconference and shall hereinafter be referred to as "the landlord."

Preliminary Matters

4. The rental agreement (T#1) submitted by the tenant at this hearing named an additional party, [REDACTED], as landlord. However, the respondent stated that [REDACTED] was her husband, but she was the sole owner of the rental property. This was supported by the fact that [REDACTED] had not signed the rental agreement and, in the copy submitted by the landlord (LL#1), his name is scratched out. In addition, all parties present referred to the respondent solely as the landlord. Based on these factors I decided that [REDACTED] was not a party requiring notice and the hearing proceeded without him.
5. The tenant submitted a duly sworn affidavit (T#2) which stated that the landlord was served personally with the notice of the hearing on 19-October-2023. The landlord admitted she had not served notice of her counterclaim on the tenant. The tenant chose not to waive his right to service. The counterclaim was therefore severed and postponed.

Issues before the Tribunal

6. The tenant is seeking the validity of the 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 (RTA 2018)*.
8. Also relevant and referred to in this decision is section 34 of the *RTA 2018*:

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.

Issue 1: Validity of the Termination Notice

Tenant's Position

9. The tenant submitted that he received multiple notices, all in relation to an alleged material breach of the rental agreement, and that these notices were invalid because he was never given a reasonable amount of time to address these alleged breaches. Further, he stated that he believed the eviction notice was retaliation for events involving a dispute over landscaping.

Landlord's Position

10. The landlord submitted that the tenant failed to comply with his contractual obligations and did not respect the property. When it was put to her that the tenant said he needed a few days more to return the paint to its original condition, she indicated to the effect that she had a low opinion of the tenant's ability as a painter and that it would not make sense to allow him to attempt to rectify this change.

Analysis

11. There was reference to several notices of termination. Only the most recent is in issue. When a party provides a notice of termination and later follows it with another notice with a later date of termination, they have indicated that they intend for the tenancy to be extended to the date in that second notice. The other party is entitled to rely on that representation if they wish to.
12. Page three of TT#3 is a notice dated 05-August-2023 and signed by the landlord. It purports to give the tenant 30 days to restore the rental premises to the pre-rental condition. It further states that pictures of the previous condition are available on request to the social worker. The landlord submitted into evidence these pictures of the premises taken before rental (LL#2). They consist of 23 pictures documenting what appears to be every room of the premises in some detail.
13. The termination notice I must consider was read into the record and all parties agreed that it read as follows:

“Sept. 5/23. Notice of eviction to [REDACTED]. You and all belongings to be vacated from [REDACTED] as of midnight Sept. 12/23. Failure to do so will result in locks being changed, entry denied, and all belongings disposed of 8 a.m.

Wednesday Sept. 13. This is per our signed agreement dated Nov. 19/21. [REDACTED]
[REDACTED], landlord."

14. Under s.34, above, any notice under the *RTA 2018* must follow certain conditions. One of these conditions is to identify the section under which the notice is given. The notice dated above does not contain any reference to a section of the act it was intended to be given under, by number or by description. The notice issued before it also fails to mention any particular section. This requirement is necessary for the tenant to understand the notice and to be able to prepare a response if necessary.

Decision

15. The notice dated 06-September-2023 fails to conform to the requirements of s. 34 of the *RTA 2018* and is therefore invalid on its face.

Summary of Decision

16. The termination notice dated 06-September-2023 is not valid.

07-November-2023

Date

[REDACTED]
Seren Cahill
Residential Tenancies Office