

Residential Tenancies Tribunal

Application 2023-0859-NL

Decision 23-0859-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 1:48 p.m. on 30-October-2023.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant” did not attend. He sent in an authorized representative form (TT#01) naming [REDACTED], hereinafter referred to as “the authorized representative,” she attended by teleconference.
3. The respondent, the [REDACTED], represented by [REDACTED], hereinafter referred to as “the landlord” she attended by teleconference.

Preliminary Matters

4. The tenant submitted into evidence an affidavit (TT#02) stating that the authorized representative served the landlord with notification of today’s hearing on 06-October-2023. Both the authorized representative and the landlord confirm service as stated.

Issues before the Tribunal

5. The tenant is seeking:
 - Validity of termination notice

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
7. Also relevant and considered in this decision is the following section of the *Residential Tenancies Act, 2018*: Section 20: Notice where material term of agreement contravened.

Issue 1: Validity of termination notice

Tenant's Position

8. The authorized representative reviewed the terms of the tenant's rental agreement (TT#03). She stated that he has a written monthly rental agreement, he moved into his apartment in 2014. Currently, he pays \$536.00 rent on the first day of each month. He paid a security deposit of \$300.00 at the start of his tenancy.
9. The authorized representative said that the tenant had a health crisis this past summer. On 18-August-2023 he had an issue with his heart and was hospitalized on 19-August-2023 he had surgery for a pacemaker. The tenant returned home on Sunday, 20-August-2023. On Monday he was once again hospitalized. With the exception of a week at the end of August/beginning of September, he has been in hospital since that time.
10. She explains that the tenant is an amputee and has mobility issues. His apartment is on the 3rd floor and that the fire door impedes him from easily exiting his floor. He was a smoker and they have been trying to find him a ground floor apartment, but this process has been unsuccessful to date.
11. She explained that the tenant's health issues in August created barriers to his thinking and that during that time he may have smoked in his apartment. She states that since his hospitalization he no longer smokes.
12. The authorized representative said that she received the tenant's termination notice late in the evening of 23-August-2023. She said that the landlord had posted a notice to enter and checked the tenant's apartment around the same time that the tenant was having his health issues. She said that the notice was open and out of the envelope and that the apartment door wasn't locked.
13. The authorized representative cites Section 20(2) and said that the landlord did not give the tenant notice of the contravention of his breach of material term before terminating the tenancy.

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.

Landlord's Position

14. The landlord confirms the details of the tenant's rental agreement. She stated that laundry and hot water are included in his rent. She confirms that they are still in possession of the tenant's security deposit.

15. The landlord declares that the issue with the tenant smoking in the apartment has been ongoing since he moved in 2014.
16. She explains that he lives in a non-smoking apartment building and that the tenant is aware that not smoking is a condition of him residing there. She has received complaints from other tenants that the tenant is smoking.
17. She said in 2018, the tenant claimed to have quit smoking, at that time, they had an agreement that he would paint the interior of the apartment.
18. The landlord submitted a picture (LL#02) of an envelope posted to the tenant's door. On 22-August-2023 she said that they posted this notice to do an inspection. When they entered the next day, they found that there were signs of the tenant smoking, his walls were discolored, there were ashtrays with cigarette butts, and his bedding had burn marks. Pictures provided (LL#03 -06).
19. The landlord confirmed that they did not give the tenant written notice of the contravention before they gave him the termination notice.
20. She said that this is a safety issue.

Analysis

21. As stated by the authorized representative, in accordance with Section 20 of the Residential Tenancies Act, 2018, as follows:

Notice where material term of agreement contravened

20. (1) Notwithstanding subsection 18(1) and paragraph 18(3)(a), where a landlord contravenes a material term of a rental agreement, the tenant may give the landlord written notice of the contravention, and if the landlord fails to remedy the contravention within a reasonable time after the notice has been served, the tenant may give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises.

(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.

(3) Where the tenant gives a landlord notice under subsection (1) or the landlord gives a tenant notice under subsection (2) that a rental agreement is terminated, the notice shall be given

(a) not less than 7 days before the end of a rental period where the residential premises is rented from week to week; and

(b) not less than one month before the end of a rental period 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.

- (4) 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.*

22. The landlord did not provide notice of the contravention and give the tenant the opportunity to correct said contravention. They have not followed the necessary steps required to serve a termination notice under Section 20 of the Act. They first must provide notice of the contravention and give the tenant the opportunity to remedy the issue. I find that the termination notice does not meet the requirements of the Act and the notice served to the tenant dated 30-September-2023 is not valid.

Decision

23. The notice served to the tenant dated 30-September-2023 is not valid.

Issue 2: Hearing expenses reimbursed \$20.00

24. The tenant submitted the receipt for \$20.00 for the cost of the hearing (TT#05) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the landlord.


Summary of Decision

25. The notice served to the tenant dated 30-September-2023 is not valid.

The landlord shall reimburse the tenant \$20.00 for the cost of filing the application.

November 2, 2023

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office