

Residential Tenancies Tribunal

Application 2023-0928-NL

Decision 23-0928-00

Seren Cahill
Adjudicator

Introduction

1. Hearing was called at 1:44 pm on 08-November-2023.
2. The applicant, [REDACTED], hereinafter referred to as the tenant, attended by teleconference.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as the landlords, also attended by teleconference.

Preliminary Matters

4. This application involves an allegation that the termination notice before this tribunal was issued in retaliation for the tenant making a complaint in relation to a residential premises. Section 29 of the *Residential Tenancy Act, 2018* (RTA 2018) reads as follows:

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, not 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.

5. Section 29(2) of the RTA 2018, above, mandates that an application of this type be submitted not more than one month after the tenant receives the termination notice. The termination notice (T#1) submitted by the tenant has a termination date of 31-August-2023.

6. A check of our records shows that the application was completed and processed on or before 29-September-2023. This is within the required time limit, so the application is valid.

Issues before the Tribunal

7. Is the termination notice valid?

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *RTA 2018*.
9. Also relevant and considered in this decision are sections 29 (see paragraph 4, above), 18(2) and (9), and 34 of the *RTA 2018*.

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

- (a) not less than 4 weeks before the end of a rental period where the residential premises is rented from week to week;
- (b) not less than 3 months before the end of a rental period where the residential premises is rented from month to month; and
- (c) not less than 3 months before the end of the term where the residential premises is rented for a fixed term.

...

(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;
- (d) 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

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

10. The tenant believes that the termination notice was issued as retaliation for a complaint she made about an illegal increase in rent. She submits that therefore the termination notice is invalid under section 29, above.

Landlords' Position

11. The landlords claim that the termination notice is not retaliatory and the relationship between the landlords and tenant has always been cordial. They argue that the notice is valid.

Analysis

12. A termination notice is invalid if it does not meet the requirements under section 34 of the *RTA 2018*, above. Examination of T#1 shows that it is in writing in the form prescribed by the minister. It contains the name of the tenant and her address, which is also identified as the residential premises the notice regards. It specifies that it is a notice under section 18 of the *RTA 2018*. It therefore meets all requirements of form under section 34.
13. A termination notice is invalid if it is not served properly. In this case, the termination notice was emailed to an address provided by the tenant as a means of contact in the initial rental agreement (T#2), and receipt was confirmed by the tenant. Section 35(2)(f) reads:

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; or

The termination notice was therefore served in compliance with the *RTA 2018*.

14. A termination notice under section 18 of the *RTA 2018* is invalid if it is not in compliance with subsection (9), as reproduced in paragraph 9 above. This notice, T#1, is signed by the person who issued it. T#2, the rental agreement, shows that the rental period ran from the first to the last of each month. It was given 31-August-2023, which is the day before the beginning of the relevant rental period. It lists the termination date as 30-November-2023. This is the last day of a rental period. It also gives the tenant the three

full months of September, October, and November. Therefore, it is in compliance with subsection (9).

15. In light of the above findings, the notice can only be found invalid if the tenant has proven, on a balance of probabilities, that the notice was issued in retaliation for a complaint.
16. Parties agree that on 27-July-2023 the landlords sent the tenant a notice that the cost of rent would increase by \$100 a month starting 3 months later. The tenant replied via text and a conversation ensued about the legality of the increase and about the legality of a rental increase that had occurred the previous year (T#3).
17. The landlords testified at the hearing that until the tenant had brought it up, they had been unaware that the previous act governing residential tenancies in this province had been replaced by the *RTA 2018*. The landlords admit they were mistaken in thinking three months' notice was sufficient. This first notice of rental increase was rescinded and the landlords let the tenant know a six month notice of rental increase would be forthcoming.
18. On page 3 and 4 of T#3, the tenant points out that the previous year's rent had been increased illegally, and that she has been a good tenant who has cared for the property, and otherwise attempts to ask by implication that the landlords reconsider the rent increase. The landlords' response agrees that the tenant has been a good one and that they would like to continue the landlord-tenant relationship, but refuses to change their mind, adding that they need to ensure they break even.
19. On 01-August-2023 the landlords sent a new notice of rental increase (T#4). It gave six months' notice for an increase of \$150 per month.
20. Page 2 of T#5 shows another short text message conversation between landlords and tenant. The tenant acknowledges receipt of the termination notice. She reports that she had spoken with a person from the Residential Tenancies Section, who told her that she was entitled to be refunded the extra payments from the illegal rent increase from the previous year. She proposes deducting the sum owed from the next rent payment. The landlords agree without argument.
21. T#6 shows more messages between the landlords and tenant, dated 25-October-2023. The exchange starts with the landlords advising the tenant that, contrary to some previous conversation, they would need to show the premises sometime in the next few days. They state they will provide the tenant with "plenty of notice," try to work with the tenant on scheduling, and have the showing done in a couple of hours. The tenant replies asking why she is being evicted if the landlord is planning to rent the unit again. The landlords reply that they are not required to provide their reasons and reiterate that they will work with the tenant to find a suitable timeframe.
22. The landlords have submitted that this tribunal should consider the correspondence provided by parties, suggesting that this will show a cordial and appropriate relationship between parties that will show there was no ill will or inappropriate intent behind the eviction notice. Pages 4-5 of LL#1 shows a text conversation between landlords and

tenant dated 09-August-2023. In this conversation the tenant mentions that there is a strong and unpleasant smell coming from two sinks and the dishwasher. The two discuss the issue. The landlords report to the tenant that they had contacted a plumber, who suggested the smell could be a result of work being done by the City of St. John's. The landlords contact the City about the matter and check the drainage. After the check, the landlords say they suspect the dishwasher must be replaced.

23. The conversation continues over the next couple of weeks. On 17-August-2023, the tenant reports she needs to leave with her child but will leave the door unlocked so the landlords can install the new dishwasher. Evidently this did not happen, as on 22-August-2023 there is more communication from the tenant discussing further difficulty with the lack of a replacement dishwasher, though the broken one was removed. The landlords say they will install the new one shortly, and the tenant once more volunteers to leave the unit unlocked while she is away to facilitate this.
24. On page 6 of LL#1, the email containing the termination notice is shown. The email reminds the tenant that if she wishes to move out before the termination date, she must still give a month's notice. It adds that the landlords' children will be moving in after the tenant has vacated.
25. Page 7 of LL#1 shows another short text conversation about a maintenance issue. The landlords say they will look into replacing the broken appliance and ask for a picture of it when the tenant has time. The tenant replies that a replacement may not be necessary, as an acquaintance has suggested he knows a way to fix it. The landlords give permission for him to try this and thanks the tenant.
26. Page 8 of LL#1 shows another conversation through text. The tenant asks if the 30 days' notice is required in the circumstances, and mentions she is in the process of buying a home. The landlords reiterate that the 30 days is required, thanks the tenant, and congratulates her.
27. The tenant submitted that she found the tone of the landlords' communications after the relationship soured to be talking down to her, rude, and even threatening, and submitted that this was evidence of the retaliatory intention. With respect to the tenant, I cannot agree. It is widely known that conversation over text, be it instant messaging or emails, can make it difficult to read tone correctly. The only message from the landlords that reads as less than polite is the second email dated 25-October-2023 (T#6 page 3 and LL#1 page 9). It is confrontational, but not rude, and still offers to work with the tenant to find an appropriate time. I would describe the tone as business-like.
28. The onus is on the tenant to demonstrate, on a balance of probabilities, that the termination notice has been given for an improper reason. The only evidence here that suggests that the notice may have been retaliatory is that it was given about a month after the tenant made the point that the landlords had made an error at law. This is not sufficient.

Decision

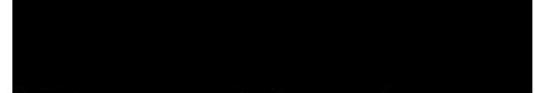
29. Considering the evidence in its totality I do not find, on a balance of probabilities, that the termination notice was issued for an invalid purpose. The termination notice is proper in form and content and was served correctly. Therefore, it is valid.

Summary of Decision

30. The termination notice which list the termination date as 30-November-2023 is valid.

09-November-2023

Date


Seren Cahill
Residential Tenancies Office