

Residential Tenancies Tribunal

Application 2023-0967-NL

Decision 23-0967-00

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 21-November-2023.
2. The applicant, [REDACTED], hereinafter referred to as the landlord, was represented by [REDACTED] of [REDACTED], who attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as the tenant, also attended by teleconference.

Issues before the Tribunal

4. Should an order of vacant possession be granted?

Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).
6. Also considered in this decision are s. 18(2), 18(9) and s. 34 of the *Act*, as follows:

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

- (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;
 - (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.

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:

Landlord's Position

7. The landlord says that a valid termination date has been given, the move out date has passed, and the tenant is still in the apartment. They are seeking an order for vacant possession in order to reclaim possession of the unit.

Tenant's Position

8. The tenant says he is a mentally ill person who will face great difficulty finding another place to live if evicted. He also made reference to a notice of rental increase he refused to sign two days before he was given the notice and suggested this was the reason he was being evicted.

Analysis

9. To be valid, a termination notice must comply with the *Act*. A copy of the termination notice at issue was provided (LL#1). This notice was in writing in the form prescribed by the minister. It contains the name and address of the recipient. It identifies the residential premises for which it is given. It identifies that it is a notice under s. 18 for termination without cause. It therefore meets all the requirements under s. 34 of the *Act*.
10. LL#1 was signed by the person who provided the notice. It was issued 29-June-2023, two days before the beginning of the relevant rental period. It gives a move out date of 30-September-2023, the last day of a rental period. It was served by affixing it to the

tenant's front door in accordance with s. 35(2)(c) of the Act. Therefore, it is in compliance with s. 18(9).

11. The move out date is more than three full months after the notice was issued. This means that the notice can only be held invalid if it was ruled to be issued for an invalid purpose under s. 29, as follows:

Termination for invalid purpose

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.

In the present case the tenant did not make an application as described in s. 29(2). In the absence of such an application I cannot consider the issue of retaliation. Applications serve an important purpose by ensuring that the parties know what they will have to speak to, giving them time to prepare and gather relevant evidence.

12. The termination notice is valid. Insofar as the tenant is still occupying the premises, he is doing so illegally.

Decision

13. The termination notice is valid. An order of vacant possession will be granted.
14. Hearing costs were not sought.

Summary of Decision

15. The tenant shall vacate the premises immediately.
16. The tenant shall pay to the landlord any costs charged to the landlord, by the Office of the High Sherriff, should the landlord be required to have the Sheriff enforce the attached Order of Possession.
17. The landlord is granted an order of possession.

12-December-2023
Date


Seren Cahill
Residential Tenancies Office