

Residential Tenancies Tribunal

Application 2023-1030-NL
2023-1057-NL

Decision 23-1030-00

Seren Cahill
Adjudicator

Introduction

1. Hearing was called at 1:44 pm on 20-November-2023.
2. The applicant to the initial claim, [REDACTED], hereinafter referred to as the landlord, attended by teleconference. The landlord called one witness, his girlfriend [REDACTED], who also attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as the tenant, also attended via teleconference.

Preliminary Matters

4. The initial application, 2023-1030-NL, was for vacant possession and rental arrears. The tenant made an application for a counterclaim to determine the validity of a termination notice. The landlord says he did not receive notice of the counterclaim, and no affidavit of service was provided to suggest otherwise. The landlord did submit an affidavit of service (LL#1) and I am satisfied the tenant was served properly and with appropriate notice.
5. Normally, only one party having effective service would result in the severing of the two claims, with the unsupported application being postponed. However, the counterclaim in this matter is purely for the determination of validity of a termination notice. An applicant seeking vacant possession must establish that, among other things, a valid termination notice was given. The counterclaim raises no issues not included in the initial claim, it is redundant. There is therefore no prejudice to the landlord in hearing both applications at once. In fact, severing the two would inconvenience both parties. This in mind, both applications are dealt with in this decision.

Issues before the Tribunal

6. Is the termination notice valid?
7. If so, should the landlord be granted an order of vacant possession?

8. Is the landlord owed outstanding rent?

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *RTA 2018*.
10. Also considered in this decision are subsections 19(1) and (4), as well as section 34 of the *RTA 2018* as follows:

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.

...

(4) In addition to the requirements under section 34, a notice under this section shall

(a) be signed by the landlord;

(b) state the date on which the rental agreement terminates and the tenant is required to vacate the residential premises; and

(c) 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.

Landlord's Position

11. The landlord submits that he purchased the premises from a previous landlord on 19-September-2023 and has received no rent since. He has applied for \$1800 in overdue rent and an order of vacant possession. He says he has taken all necessary steps to evict the tenant and has made good faith attempts to receive the rent to no effect.

Tenant's Position

12. The tenant submits that she has done all she can to ensure the landlord receives the rent. She says that the rent had been paid by social assistance, and the landlord did not provide her with the necessary financial information in a timely manner, and this is why rent was not received.

Analysis

13. A copy of the rental agreement between the previous landlord and the tenant was not provided. However, parties agree on what the terms were. It was a month-to-month lease running from the first to the last of each month, with rent set at \$1800 a month, utilities included. A damage deposit of \$1050 was paid on 01-November-2022. In support of this, a document (LL#2) was provided which the tenant has signed, acknowledging the terms of the agreement.
14. Sometime shortly after the landlord purchased the property the tenant and the landlord and/or his girlfriend met with the tenant to discuss the transfer of ownership. The tenant explained that social assistance pays her rent and she would need some information from the landlord to provide them in order to ensure he received payment, including a void cheque. Reluctant to share his financial information with a person he had just met, the landlord refused and said he would contact social assistance directly.
15. Complicating matters, the tenant says she was never paying the whole of the rent. She says that at the beginning of the tenancy with the previous landlord, she was dividing the rent with a roommate. This roommate was ejected for not paying rent, and the tenant was told to find a new roommate, which she did. The new roommate, A, apparently paid the landlord in cash and her name was never put on the lease or any documents. The cash payment was directly from A to the landlord without passing through the tenant's hands. By the time of the hearing, A had left the apartment. The landlord says he knew nothing of A. This omission would not be the only thing the previous landlord did not disclose, as they had also been told that the tenant's lease was to expire in November.
16. Parties agree that, termination notices aside, most or substantive communications between them happened via text message, with the landlord's girlfriend as an intermediary. A copy of these text messages was provided (LL#3). On 26-September-2023 the tenant told the landlord that social assistance pays the rent directly to the landlord. The landlord asks for contact information for social assistance and the tenant responds that she will send the info later that day. On 29-September-2023 the landlord says that social assistance told him that the tenant would send him the payment or payment information. The tenant responds that she will send her portion when she gets home, and A will send her portion the next day. On 01-October-2023 the landlord says

he has not received either portion of the rent. On 04-October-2023 the tenant responds, saying the payment was delayed due to the change of landlord and will be “fixed” as of the next day. The tenant testified that this was when she became aware that there was an issue with the rent. The landlord replied asking for the contact information for the person that arranged the transfer. Later the same day the landlord added that he had received a response from social assistance, and they told him he needed information from the tenant, and accordingly he asked for that information. On 10-October-2023 the landlord messaged again, attaching a notice of rent being late. On 16-October-2023 the tenant replied with the requested information.

17. The tenant said she had not seen the messages because she uses a text messaging app which does not send notifications and she had mostly ceased using it. She says she had checked on the 16^h because she thought it was strange that she hadn’t heard from the landlord. She acknowledged that she had provided no other method of communication to the landlord. The landlord says he had tried the tenant’s front door several times but would receive no response or a brief response promising that the tenant would contact him later.
18. The landlord testified that he contacted social assistance again after he received the tenant’s text on 16-October-2023. He was told that in the event the landlord had changed and no information was provided, the full amount would normally be given to the tenant to pass on to the new landlord. Assuming that the tenant would already have the money and being told that it was too late for them to receive the rent for October, they did not proceed to set up direct deposit with social assistance for the next month. The tenant said that after the property changed ownership, she no longer received any money from social assistance.
19. Two termination notices were issued to the tenant. The second of these notices is the one at issue in this decision. A copy was provided (LL#4). It names the tenant and the premises, it is in writing in the form prescribed by the minister, and it states it is a notice under section 19, therefore meeting all requirements under section 34 of the *RTA 2018*, above.
20. The notice is signed by the landlord, states the date of termination, and was delivered personally, and therefore meets all requirements under section 19(4) of the *RTA, 2018*, above.
21. The notice was issued on 24-October-2023, 23 days after the rent was due. It gives a move out date of 04-November-2023. There are 10 clear days between those dates, in compliance with section 19(1) of the *RTA, 2018*. It is therefore valid unless I find the tenant has not failed to pay rent.
22. In cases where rent is being paid by a government agency on behalf of a tenant, it may be the case that the tenant does not “fail to pay rent” if they take all reasonable steps to ensure rent is paid, and it is not due to the fault of the landlord or the agency. However, I cannot find that this is the case here. It is evident that the tenant did not maintain clear lines of communication with the new landlord. There was one period where she did not communicate for 12 days and provided no way she could be reached. On 29-September-2023 and 04-October-2023 she made promises of payment which she knew

or ought to have known were unrealistic. She relies on the request she made for the landlord's financial information in their initial meeting as evidence that she tried to ensure payment was made, but this is the only evidence. She did state she phoned social assistance again during October and that they told her they would need the landlord's financial information, but there is no evidence that she communicated the results of this conversation to the landlord or repeated the request for that information. She promised to provide contact numbers to the landlord but there is no evidence she ever did so. In short, she made at most a minimal effort. This is not sufficient. I therefore find that she failed to pay rent for the month of October.

23. The landlord has claimed for \$1800 from the tenant for the month of October. It is acknowledged that only the tenant is on the paperwork, and that she signed an acknowledgement (LL#2) that the rent is \$1800, and that she is the sole signatory to this document. This document is not a binding contract, however. The landlord did not know of the roommate, A, before the purchase of the property, but it is clear from the text messages that they did know of the situation as of, at the latest, 29-September-2023. The landlord has made the point that they cannot recover from A as they have nothing proving she lived at the premises.
24. Regardless of the acknowledgement, the tenant cannot be held responsible for another's rent unless that person is subletting from the tenant. Since there is no written documentation either way, I must consider whether the relationship between the tenant and A had the character of a sublease. The previous landlord required the tenant to locate a roommate to share rent with, which is suggestive of a sublease. Additionally, the tenant is the only signature to the main rental agreement. On the other hand, A paid rent directly to the landlord, not to the tenant, which is suggestive that she was a regular tenant and not a subtenant. Additionally, under section 4(2)(b) of the *RTA 2018*, tenants whose rent is subsidized by a government or government agency do not have the legal right to sublet. Viewing the evidence in its totality, I conclude that this was not a sublease, and the tenant is only responsible for her half of the rent.
25. The termination notice with a move-out date of 04-November-2023 was valid. Insofar as the tenant is still occupying the property she is doing so illegally, and accordingly the landlord will be granted an order of vacant possession. As the tenancy has ended, the security deposit must be dealt with. It will be applied against moneys owed.
26. No request was made for an order for costs and thus no such order is granted.

Decision

27. The tenant owes the landlord \$900 in overdue rent. The security deposit will be applied against this sum. The landlord is granted an order for vacant possession.

Summary of Decision

28. The tenant shall vacate the premises immediately.

29. 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.
30. The landlord is granted an order of vacant possession.
31. The landlord shall retain \$900 of the tenant's security deposit.

04-December-2023

Date



Seren Cahill
Residential Tenancies Office