

Residential Tenancies Tribunal

Application 2023-1049-NL

Decision 23-1049-00

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 18-January-2024 at 2:01 pm.
2. The applicant, [REDACTED] hereinafter referred to as the tenant, appeared via teleconference.
3. The respondent, [REDACTED] hereinafter referred to as the landlord, did not attend.

Preliminary Matters

4. The landlord was not present or represented at the hearing and I was unable to reach them by telephone at the start of the hearing. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the Rules of the Supreme Court, 1986. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, where the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as they have been properly served. The tenant submitted an affidavit (T#1) with their application stating that they had served the landlord with notice of the hearing, electronically, on 05-January-2024. The appropriate supporting documents were also provided. As the landlord was properly served, and as any further delay in these proceedings would unfairly disadvantage the tenant, I proceeded with the hearing in their absence.

Issues before the Tribunal

5. Is the termination notice dated 31-October-2023 valid?

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* (the *Act*).

7. Also relevant and referred to in this decision are sections 18, 29, and 34 of the Act, reproduced below:

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.

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.

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

8. To be valid, a termination notice must comply with the *Act*. A copy of the termination notice (T#2) at issue was provided by the tenant. This notice was in writing but not in the form prescribed by the minister. However, s. 22(f) of the *Interpretation Act, 1990* reads as follows:

Implied provisions

22. In an Act or regulation

...

- (f) where a form is prescribed, deviations from the form not affecting the substance nor calculated to mislead, do not invalidate the form used;

Not using the form prescribed by the minister is therefore insufficient to render the notice invalid. T#2 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 complies with s. 34 of the *Act*.

9. T#2 was signed by the person who provided the notice. It was issued on 31-October-2023, the day before the relevant rental period begins. It gives a move out date of 31-January-2024, the last day of a rental period. The tenant testified it was served personally, in compliance with s. 35(2)(a) of the *Act*. It therefore complies with s. 18(9) of the *Act*.
10. 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.
11. The tenant submits the termination notice is retaliatory. He states that when the previous landlord was in discussions regarding the sale of the property, it came out that the new owner felt an appropriate market price for rent was \$1300 a month. The tenant was currently paying \$900 a month. He said he had discussions with the landlord regarding the sale and the rent and insisted on receiving 6 months' notice of a rental increase in accordance with s. 16(3)(b) of the *Act*. He testified that they attempted to persuade him to accept less notice and he refused. It was after this that he was told he would receive and did receive T#2.
12. I accept the tenant's uncontradicted testimony. It is clear that the s. 18 notice was issued in retaliation for the tenant insisting his rights under the *Act* be respected.

Summary of Decision

13. The notice dated 31-October-2023 is invalid.
14. As the tenant was successful, he is entitled to have his hearing costs covered. This includes the \$20 hearing fee, and the cost of registered mail, for which a receipt was provided totaling \$24.15.

Decision

15. The notice dated 31-October-2023 is invalid.
16. The landlord shall pay to the tenant \$44.15 in hearing costs.

31-January-2024

Date

[Redacted]
Seren Cahill
Residential Tenancies Office