

Residential Tenancies Tribunal

Application 2023-1072-NL
Application 2023-1134-NL

Decision 23-1072-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:47 p.m. on 11-January-2024. Hearing was reconvened at 11:00 a.m. on 23-January-2024.
2. The applicant, [REDACTED] hereinafter referred to as "the tenant" attended by teleconference.
3. The respondent and counter applicant, [REDACTED] represented by [REDACTED] hereinafter referred to as "the landlord" attended by teleconference.

Preliminary Matters

4. The tenant testified that he served the landlord with the notice of hearing personally on 21-November-2023. The landlord confirmed that he received the document on that day but refused to open it and returned it to the tenant. The landlord filed his own application and submitted an affidavit stating that he served the tenant with the notice of hearing via prepaid registered mail [REDACTED] on 12-December-2023 (LL#1). In accordance with the *Residential Tenancies Act, 2018* this is good service.
5. There is a verbal month to month rental agreement which commenced on 1-March-2022. Rent is \$700.00 per month due on the first of each month. A security deposit was never paid.

Issues before the Tribunal

6. The tenant is seeking:
 - Validity of the 90-day termination notice
 - Hearing expenses \$20.00
7. The landlord is seeking:
 - An Order for Vacant Possession of the rented premises.
 - Rent paid \$2800.00
 - Late fees \$75.00
 - Hearing expenses \$33.44

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
9. Also, relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 10: Statutory Conditions, Section 19: Notice where failure to pay rent, Section 24: Notice where tenant contravenes peaceful enjoyment and reasonable privacy and Section 34: Requirements for Notices. Also, relevant and considered is Section 12-1 of the *Residential Tenancies Policy Manual*: Recovery of Fees.

Issue # 1: Validity of Termination Notice Vacant Possession of the Rented Premises

Relevant Submission 1:

10. The tenant submitted a copy of a termination notice that he received from the landlord giving him a 90-day eviction notice, to vacate the unit by 3-November-2023 (TT#1).

Tenant's Position:

11. The tenant is questioning the validity of the notice and states that it is not a valid notice.

Landlord's position

12. The landlord testified that he gave the notice on 3-August-2023 to vacate by 3-November-2023.

Analysis

13. Section 18 of the *Residential Tenancies Act, 2018*, states:

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

(b) not less than 3 months before the end of a rental period where the residential premises is rented from month to month; and

(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.

14. Section 34 of the *Residential Tenancies Act, 2018* states:

Requirements for Notices

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.*

15. I find that the 90-day termination notice was given 2 days later than the first day of the rental period and as a result does not meet the requirements of Section 18 as stated above. Also, the termination notice did not state the section of the Act as per Section 34 stated above. For those reasons, I find that the 90-day termination notice was not a valid notice.

Relevant Submission 2:

16. The landlord submitted a copy of a second termination notice that was given to the tenant on a *Landlord's Notice to Terminate Early – Cause* form dated for 20-November-2023 with a termination date of 1-December-2023 under Sections 19 and 24 of the *Residential Tenancies Act, 2018* (LL#2).

Landlords Position

17. The landlord testified that he gave a second termination notice to the tenant to vacate the unit under Section 19 for nonpayment of rent and also under Section 24 for peaceful enjoyment. With regards to rent, the landlord testified that rent is outstanding in the amount of \$2800.00 for the period of 1-October-2023 to 31-January-2024. With regards to peaceful enjoyment, the landlord stated that he and his wife are in their 80's and they don't want to listen to the tenant's kid or his dog or any guests that he may have over late at night. The landlord stated that he wishes to live within a more peaceful environment.

Tenant's Position

18. With regards to the rent, the tenant testified that the landlord would not accept rent from him. The tenant stated that he gave the landlord the outstanding rent money on 21-November-2023 only to have it returned to him. The tenant stated that he cannot be evicted for nonpayment of rent when the landlord refused to accept payment. With regards to peaceful enjoyment, the tenant disputes interfering with the peaceful enjoyment and reasonable privacy of the landlord. The tenant stated that his son is a child and will make some noise when he is with him.

Analysis

19. Section 19 of the *Residential Tenancies Act, 2018* states:

Notice where failure to pay rent

19. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),

(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.

(2) Notwithstanding subsection (1), where the tenant pays the full amount of the overdue rent, including a fee under section 15, before the date specified in the notice under paragraph (1)(a) or (b), the rental agreement is not terminated and the tenant is not required to vacate the residential premises.

20. The tenant was in rent arrears in excess of the 5 days when the termination notice was served on 20-November-2023. The tenant made every effort to pay the outstanding rent on the following day, 21-November-2023. The tenant testified that the landlord would not accept the rent and when I asked the landlord if this was true, he stated that it was, and he returned the monies to the tenant on that day. In accordance with Section 19 (2) of the *Residential Tenancies Act, 2018* as stated above, the rental agreement is not terminated due to nonpayment of rent.

21. Section 24 of the *Residential Tenancies Act, 2018* states:

Notice where tenant contravenes peaceful enjoyment and reasonable privacy

24. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes statutory condition 7(a) set out in subsection 10(1), the landlord may give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises on a specific date not less than 5 days after the notice has been served.

22. The relevant subsections of Section 10 of the *Residential Tenancies Act, 2018* states:

Statutory Conditions

10.(1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of the landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:

7. Peaceful enjoyment and reasonable privacy –

- (a) The tenant shall not unreasonably interfere with the rights and reasonable privacy of a landlord or other tenants in the residential premises, a common area or the property of which they form a part.

23. With regards to peaceful enjoyment, the landlord could not give incidences or dates whereby the tenant interfered with his peaceful enjoyment or reasonable privacy. The landlord stated that he is at an age in his life where he and his partner no longer want to rent the unit. Without evidence to show that the tenant actually interfered with the

landlord's peaceful enjoyment, I am unable to award vacant possession under Section 24 of the Act.

24. I find that the termination notice given on 20-November-2023 does not meet the requirements of *Act* under Section 19 for nonpayment of rent nor does it meet the requirements of the *Act* under Section 24 for peaceful enjoyment.
25. I find that the tenant has a right to remain at the rental premises until such time as a valid termination notice is given.

Decision

26. The landlord's claim for an order for vacant possession of the rented premises does not succeed.
27. The tenant's request for a determination of the validity of the 90-day termination notice is that the notice was not a valid notice.

Issue # 2: Rent paid \$2800.00

Relevant Submission

28. The landlord testified that rent is outstanding in the amount of \$2800.00 and he submitted a copy of the rental ledger to support his claim (LL#3). See breakdown of ledger below:

Rental Ledger 2023-1072-NL & 2023-1134-NL			
Date	Action	Amount	Total
September 30, 2023	Balance	\$0.00	\$0.00
October 1, 2023	Rent due	\$700.00	\$700.00
November 1, 2023	Rent due	\$700.00	\$1,400.00
December 1, 2023	Rent due	\$700.00	\$2,100.00
Janauary 1, 2024	Rent due	\$700.00	\$2,800.00

Landlord's Position

29. The landlord testified that rent is outstanding in the amount of \$2800.00 for the period of 1-October-2023 to 31-January-2024. The landlord is seeking rent to be paid in full.

Tenant's Position

30. The tenant did not dispute that rent is outstanding in the amount of \$2800.00 and he testified that he was unable to pay his rent as the landlord would not accept it from him. The tenant stated that he gave the rent to the landlord in an envelope on 21-November but the landlord returned it to him and told him that he will not be accepting any rent from him.

Analysis

31. Section 19 of the *Residential Tenancies Act, 2018* states:

Notice where failure to pay rent

- 19. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),**

(b) *where the residential premises is*

rented from month to month,

rented for a fixed term, or

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*

32. Non-payment of rent is a violation of the rental agreement. The landlord testified that there is outstanding rent in the amount of \$2800.00 for the period of 1-October-2023 to 31-January-2024. The tenant is not disputing that rent is outstanding and testified that the landlord would not accept the rent. Rent is required to be paid for the use or occupancy of a residential premises, and as such I find that the tenant is responsible for outstanding rent in the amount of \$2800.00.

Decision

33. The landlord's claim for rent succeeds in the amount of \$2800.00.

Issue # 3: Late fees \$75.00

34. Section 15 of the *Residential Tenancies Act, 2018* states:

Fee for failure to pay rent

15. (1) Where a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister.

The minister has prescribed the following:

Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed

(a) \$5.00 for the first day the rent is in arrears, and

(b) \$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00

35. *Residential Tenancies Policy 12-1; Recovery of Fees* states:

Late payment fee:

A tenant is responsible to pay the landlord the full rent on the day the rent is due. If the rent is not paid on time, the landlord may charge the tenant a late payment fee of \$5.00 for the first day the rent is in arrears and \$2.00 for each additional day that the rent remains unpaid in any consecutive number of rental periods to a maximum of \$75.00.

36. The landlord's rental ledger shows that the tenant has been in arrears since 1-October-2023. The tenant testified that he made an attempt to pay the outstanding rent on 21-November-2023. During the period of 1-October to 21-November rent was in arrears, and as such I find that the maximum allowable late fee of \$75.00 as set by the Minister is a legitimate charge as stated above.

Decision

37. The landlord's claim for late fees succeeds in the amount of \$75.00.

Issue # 4: Hearing expenses \$33.44

38. The landlord paid an application fee of \$20.00 to *Residential Tenancies* and provided a copy of the receipt (LL#4). The landlord also submitted a copy of a receipt from Canada Post in the amount of \$13.44 for the cost to mail the service document (LL#5).
39. The tenant also paid an application fee of \$20.00 to *Residential Tenancies* and provided a copy of the receipt (TT#2).
40. The landlord's claim for losses has been successful as per paragraphs 33 and 37, however the landlord refused to accept rent from the tenant which was out of the tenant's control. For that reason, I find that the tenant is not responsible for hearing expenses incurred by the landlord. Also, as the tenant's claim to question the validity of the termination notice was found to be in the tenant's favour, I find that the landlord shall reimburse the tenant for his hearing expenses.

Decision

41. The landlord's claim for hearing expenses does not succeed.
42. The tenant's claim for hearing expenses succeeds in the amount of \$20.00.

Summary of Decision

43. The landlord's claim for vacant possession of the rented premises does not succeed.
44. The tenant may remain at the rental premises until such time as a proper termination notice is received.
45. The tenant shall pay the landlord \$2855.00 as follows:

Rent.....	\$2800.00
Late fees	75.00
Less hearing expenses.....	20.00
Total.....	<u>\$2855.00</u>

January 31, 2024

Date

Pamela Pennell
Residential Tenancies Office