

Residential Tenancies Tribunal

Application 2023-1221-NL

Decision 23-1221-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:03 a.m. on 5-February-2024.
2. The applicant, [REDACTED] hereinafter referred to as "the tenant", attended by teleconference.
3. The respondents, [REDACTED] (respondent 1) and [REDACTED] (respondent 2), hereinafter referred to as "the landlords", attended by teleconference.

Preliminary Matters

4. There was a verbal month to month rental agreement with the original landlord that commenced on 1-August-2021. The property was sold and new buyers / landlords took over the tenancy effective 24-November-2023. Rent is \$600.00 per month, due on the first of each month. A security deposit was never paid.
5. The applicant submitted a copy of an affidavit stating that he served the landlords with the notice of hearing personally at the landlords address on 25-January-2024 (TT#1). Respondent 2 disputed that he was served personally and stated that the applicant gave his document to respondent 1. Respondent 1 confirmed receiving both documents on that day. In accordance with Section 35 (b) of the *Residential Tenancies Act, 2018*, a notice or other document under this *Act* other than an application shall be served by a tenant on a landlord by giving it to a person 16 years of age or older who apparently lives with the landlord. This is good service.

Issues before the Tribunal

6. The tenant is seeking:
 - A determination of the validity of a termination notice.

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.

8. Also, relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 18; Notice of termination of rental agreement and Section 29; Termination for invalid purpose.

Issue # 1: Validity of Termination Notice

Relevant Submissions

9. The tenant submitted a copy of a termination notice issued to him on 5-December-2023 to vacate on 31-March-2024 under Section 18 of the *Residential Tenancies Act, 2018* (TT#2).

Tenant's Position

10. The tenant stated that the termination notice was given out of retaliation when he refused to accept a rent increase from the new landlords. The tenant stated that the new landlords took over the tenancy on 24-November-2023 and communicated to him that rent will increase from \$600.00 per month to \$900.00 per month. The tenant stated that he accepted a rent increase but wanted a proper 6-month notice.
11. The tenant testified that when he refused to accept the immediate rent increase, respondent 2 gave him a choice of a 3 months' notice of rental increase or a 3 months' notice of eviction. The tenant submitted a written record of the details of the circumstances with dates to support his claim for retaliation (TT#3). The tenant stated that on 5-December-2023 he received a standard 3-month termination notice and he states that it was given out of retaliation.

Landlord's Position

12. The landlords disputed that they gave the termination notice out of retaliation and respondent 2 stated they had personal reasons to give the standard termination notice. Respondent 2 stated that he does not have to provide a reason to give a standard 3 month notice and as such wants the tenant to vacate on 31-March-2024 as stated on the notice.

Analysis

13. The relevant subsections of Section 18 of the *Residential Tenancies Act, 2018* state:

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

18 (9) In addition to the requirements under section 34, a notice under this section shall
(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. However, section 29 of the *Residential Tenancies Act, 2018* also states:

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, no 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.

15. I find that the landlords met the requirements of the *Act* when issuing the termination notice from a timeline perspective and I find that the tenant made application to *Residential Tenancies* within the 1-month period as stated above.

16. I find that the landlords were willing to continue the tenancy on 3-December if the tenant agreed to a 3-month notice for a rent increase. When the tenant disagreed and demanded a proper 6-month notice, the tenant was given a standard termination notice 2 days later. I do not accept the landlord's testimony that the notice was given due to personal circumstances. I find that the termination notice was given out of retaliation when the tenant would not accept a rent increase without proper notice.

17. I find that the landlords contravened Section 29 of the *Residential Tenancies Act, 2018* as stated above, and as such I find that the termination notice is not a valid notice.

Decision

18. The termination notice issued on 5-December-2023 to vacate on 31-March-2024 under Section 18 of the *Act* is not a valid notice.

Issue #2: Reinstatement of the Landlord's Right to Terminate

19. Despite my finding that the termination notice issued to the tenant on 5-December-2023 was given for an invalid purpose, as contemplated under Section 29 of the *Act*, it has to be recognized that landlords in this province do have the right to terminate tenancies, as outlined in Section 18, without having to provide reasons to either the tenant or this Tribunal.

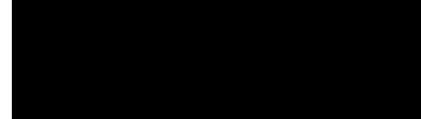
20. Tenants in this province do not have a right to security of tenure and Section 29 of the *Act* ought not to be utilized as a means to gain such security. However, it would seem to be for an equally invalid purpose if the landlord were to issue another Section 18 notice to the tenant, say, the day after this decision was released (or 2 days after, etc.). Some balance must be struck. I find in accordance with Section 47(1)(p) that it is appropriate that there be a "cooling off" period and I therefore order that the landlords are prohibited from issuing the tenant another termination notice under Section 18 of the *Act* until 01 May 2024, at which point they are once again authorized to exercise that right. This prohibition has no effect on the landlord's right to issue a termination notice for cause, as indicated in Sections 19 through 24 of the *Act*.

Summary of Decision:

21. The standard termination notice issued on 5-December-2023 is not a valid notice.
22. The landlords are prohibited from issuing to the tenant a termination notice under Section 18 of the Residential Tenancies Act, 2018 before 1-May-2024.

February 7, 2024

Date



Pamela Pennell, Adjudicator
Residential Tenancies Office