

Residential Tenancies Tribunal

Application 2024-0055-NL

Decision 24-0055-00

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 9:00 AM on 15 February 2024 via teleconference.
2. The applicant, [REDACTED] hereinafter referred to as "the landlord", attended the hearing and did not call any witnesses.
3. The respondent, [REDACTED] hereinafter referred to as "the tenant", attended the hearing.
4. The details of the claims were presented as a verbal monthly rental agreement with rent set at \$750.00, due on the 1st of each month. There was a security deposit collected on this tenancy in February 2021, still in the possession of the landlord, in the amount of \$350.00. The tenant has resided at [REDACTED] since 1 February 2021. The landlords issued a termination notice on 1 October 2023 to terminate the tenancy on 31 January 2024 under section 18 of the *Residential Tenancies Act, 2018* (**Exhibit L #1**). On 29 January 2024 at approximately 10:45 AM, the tenant was personally served an Application for Dispute Resolution (**Exhibit L #2**).
5. In a proceeding under the *Residential Tenancies Act, 2018*, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicant has to establish that his/her account of events are more likely than not to have happened.

Preliminary Matters

6. The landlord did not amend his application at the hearing and was only seeking an Order for Eviction/Possession of Property. The landlord also stated during the hearing, he wished to amend the termination notice to indicate [REDACTED] NL, rather than [REDACTED] NL.
7. The tenant did not call any witnesses during the hearing.

Issues before the Tribunal

8. The landlord is seeking the following:

- An order for eviction and possession of property.

Legislation and Policy

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

10. Also relevant and considered in this case is S. 18, 34 and 35 of the *Residential Tenancies Act, 2018*.

Issue 1: Order for eviction/ possession of property

Landlord Position

11. The landlord presented testimony the rental agreement of the rented premises located at [REDACTED] NL, is a verbal monthly tenancy of the two-bedroom apartment.

12. The landlord suggested he personally served a notice under section 18 in person to the tenant on 1 October 2023 to be out of the residence by 31 January 2024 by placing it on the entry way to the tenant's apartment (**Exhibit L # 1**). The landlord stated the tenant remain in the unit at the time of the hearing (15 February 2024).

13. The landlord testified he personally served the tenant the Application for Dispute Resolution on 29 January 2024 (**Exhibit L # 2**).

Tenant Position

14. The tenant did not dispute any of the information presented by the landlord in relation to the verbal rental agreement. He did testify that he did not receive the termination notice issued by the landlord. The tenant stated he did receive the Application for Dispute Resolution on 29 January 2024 after personal service by the landlord.

15. The tenant disputed the notice to terminate and questioned its validity as the identified address was incorrect. He testified he does not reside in [REDACTED] NL, rather [REDACTED] NL.

Analysis

16. Section 18 (2) (b) of the Act, states:

Notice of termination of rental agreement

(2) A landlord shall give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential property

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

17. On examination of the termination notice and submitted into evidence (**Exhibit L # 1**), I find the notice dated on 1 October 2023 with a terminated date of 31 January 2024. This notice provides for an excess of 3 months notice and is in full compliance with the requirements of Section 18 (2)(b).

18. Section 18 (9) and 34 identify the technical requirements of the termination notice. On examination of the termination notice, I find all these criteria have been met in relation to section 18 (9).

Section 18 (9)

In addition to the requirements under Section 34, a notice under this section shall

- (a) be signed by the landlord;*
- (b) be given not later than the first day of the rental period;*
- (c) state the date on which the rental agreement terminates and the tenant is required to vacate the residential premises; and*
- (d) be served in accordance with section 35.*

19. In review of section 34, the criteria required with a termination notice are as follows:

Section 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.*

20. As identified above, the landlord testified that the termination notice was served personally, which is a permitted method of service identified under Section 35; and the landlord stated he placed the notice on the entry way of the tenant's rental unit.

21. What I do not observe is that the address of the recipient or the identify of the residential premises for which the notice is give. The tenant not only disputed not receiving the

section 18 notice to terminate, but also identified that the incorrect address was on this notice. The landlord attempted to amend during the hearing the address identified on the notice from [REDACTED] to [REDACTED]

[REDACTED] Furthermore, the tenant confirmed his address is indeed [REDACTED]
NL.

22. *Policy Number: 07-001, Notice of Termination*, offers clear direction to an Adjudicator as it states, “*the address of the rental premises for which the termination is given*”. Due to the significance of any valid termination notice and the potential outcome of this notice for tenants, it is of utmost importance that the identified location and tenant is indicated and all criteria are met as defined under section 18, 34 and 35 in this situation.

Decision

23. The landlord’s claim for an order for vacant possession fails

Summary of Decision

24. The landlord’s claim for vacant possession fails.

28 February 2024

Date

[REDACTED]
Michael J. Reddy
Residential Tenancies Office