

Residential Tenancies Tribunal

Application 2024-0078-NL

Decision 24-0078-00

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 1:45 PM on 20 February 2024 via teleconference.
2. The applicants, [REDACTED] hereinafter referred to as “landlord1”, and [REDACTED] hereinafter referred to as “landlord2”, attended the hearing.
3. The respondent, [REDACTED] hereinafter referred to as “tenant1”, attended the hearing. [REDACTED] hereinafter referred to as “tenant2”, did not attend the hearing.
4. The details of the claims were presented as a signed monthly rental agreement with rent set at \$500.00, due on the 1st of each month. There was a security deposit collected on this tenancy on 28 March 2022, still in the possession of the landlords, in the amount of \$150.00. Tenant1 has resided at [REDACTED] since 2022, and tenant2 has resided at the rental since August 2023. The landlords issued a termination notice on 5 October 2023 to terminate the tenancy on 31 January 2024 under section 18 of the *Residential Tenancies Act*, 2018 (**Exhibit L # 1**). On 6 February 2024 at approximately 2:18 PM, the tenant was served an Application for Dispute Resolution (**Exhibit L #2**) by electronic mail at [REDACTED] and [REDACTED] (**Exhibit L # 3**).
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 landlords did not amend their application during the hearing and did not call any witnesses during the hearing.
7. Tenant1 did not call any witnesses during the hearing.

8. Tenant2 was not present or represented at this 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 she has been properly served. The landlords submitted an affidavit with their application stating tenant2 was served, by electronic mail, on 6 February 2024. As tenant2 was properly served, and as further delay in the proceedings would unfairly disadvantage the landlords, I proceeded with the hearing in her absence.

Issues before the Tribunal

9. The landlord is seeking the following:
- An order for eviction and possession of property; and
 - Hearing Expenses- \$20.00

Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act*, 2018
11. 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

12. Landlord1 presented testimony that the rental agreement of the rented premises located at [REDACTED] NL, is a verbal monthly tenancy of the three bedroom home, in which all tenants rent individual rooms.
13. Landlord1 suggested that he issued a notice under section 18 in person to the tenants on 5 October 2023 to be out of the residence by 31 January 2024. The landlord stated the tenants remain in the unit at the time of the hearing (20 February 2024).
14. Landlord1 offered evidence of a Notice to Terminate the tenancy under Section 18 of the *Residential Tenancies Act*, 2018 (**Exhibit L # 1**).

Tenant Position

15. Tenant1 did not dispute the testimony offered by the landlords in relation to the rental agreement and did not dispute receiving the Landlord's Notice to Terminate- Standard or the Application for Dispute Resolution.
16. Tenant1 did testify that he felt the Notice to Terminate was issued to both tenants as a form of retaliation from the landlords due to a previous Application for Dispute Resolution which the tenants had completed. When asked if he had any evidence to offer in relation to the claim the current hearing and application was retaliation, tenant1 stated, "No".

Analysis

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

Notice to 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.

18. On examination of the termination notice and submitted into evidence, I find the notice served on 5 October 2023 with a terminated date of 31 January 2024. I find that, as the date of termination identified on the notice is not less than 3 months before the end of the rental period and the date the tenant is required to move out, the termination notice is in full compliance with the requirements of Section 18 (2)(b).
19. 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.

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.*

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, landlord1 testified that the termination notice was served personally which is a permitted method of service identified under Section 35.
21. According to the reasons identified above, I find that the termination notice issued by the landlord to be proper and valid. Therefore, the landlords are entitled to an order for vacant possession of the property along with an order for any and all costs associated with certifying the orders or with the Sheriff to enforce such a Possession Order should the Sheriff be engaged to execute the Possession Order.
22. Also worth consideration in this analysis and decision of the issue #1 is tenant1's allegation the notice was issued by the landlord in retaliation. Regarding this suggestion, tenant1 verbally stated he had no evidence to support this claim. As defined in section 29(2) of the *Residential Tenancies Act*, 2018:

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 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 or 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.

23. The tenants have not filed an Application for Dispute Resolution in manner set fourth under the *Act*.

Decision

24. The landlords claim for an order for vacant possession does succeed. The landlords are further awarded any costs associated with the certification and enforcement of the Possession Order by the High Sheriff of NL, should it be required.

Issue 2: Hearing Expense \$20.00

25. The landlords submitted a receipt for the hearing expense for the Application for Dispute Resolution (**Exhibit L # 4**) in the amount of \$20.00.

Analysis

26. I find the landlords are entitled to the **\$20.00** hearing expense reimbursement as their application succeeds.

Decision

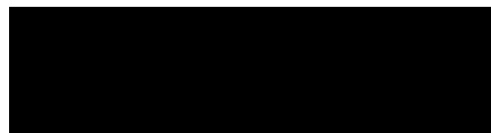
27. The landlords claim for hearing expense succeeds in the amount of **\$20.00**.

Summary of Decision

28. The landlords are entitled to the following:
- An order for vacant possession of the rented premises,
 - The tenants shall also pay to the landlords any costs charged to the landlord by the Office of the High Sheriff should the landlords be required to have the Sheriff enforce the attached Order of Possession.
 - The tenants shall also pay the landlord \$20.00 hearing expense.

March 7 2024

Date



Michael J. Reddy
Residential Tenancies Office