

Residential Tenancies Tribunal

Application 2024-0102-NL
Application 2024-0109-NL

Decision 24-0102-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:02 a.m. on 5-March-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. [REDACTED] attended as a support person.

Preliminary Matters

4. The counter application submitted by the landlord’s son; [REDACTED] will be amended to change the name of the applicant in Part 1 of the application from [REDACTED] to [REDACTED] (LL#1) and made the application on behalf of his father, [REDACTED]. It has been determined that although [REDACTED] he is not the landlord and cannot be named as such for the purpose of this hearing.
5. The tenant testified that he served the landlord’s representative with the notice of hearing personally on 13-February-2024 (TT#1). The landlord’s representative also submitted an application and both applications were linked to be heard the same time. The landlord’s representative submitted an affidavit stating that he served the tenant with the notice of hearing personally at the residential premises on 13-February-2024 (LL#2). In accordance with the *Residential Tenancies Act, 2018* this is good service.
6. There is a verbal month to month rental agreement which commenced in June-2012. Rent is \$600.00 per month due on the first of each month. A security deposit was never paid.

Issues before the Tribunal

7. The tenant is seeking:
 - Validity of the termination notice

8. The landlord is seeking:
 - An Order for Vacant Possession of the rented premises.

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 decision are the following sections of the *Residential Tenancies Act, 2018*: Section 19: Notice where failure to pay rent.

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

Relevant Submission:

11. The landlord's representative submitted a copy of a termination notice given to the tenant on a *Landlord's Notice to Terminate Early – Cause* form. The notice was signed by the son of the landlord (Power of Attorney) dated 2-February-2024 to vacate the premises on 18-February-2024 (LL#3). The tenant confirmed receiving the notice on his front door.

Landlord's Position:

12. The landlord's representative stated that the tenant has not paid rent to his father since his father was admitted to hospital and the representative also stated that he believes that the rent has been outstanding for a long time. The representative stated that there is no evidence through bank transactions to show that any rent monies have been deposited into his father's back account for a long time to substantiate that rent has been paid.

Tenant's Position

13. The tenant is questioning the validity of the termination notice and stated that he has always paid his rent in full to the landlord with cash. The tenant did not dispute that he has not paid rent for January and February 2024 and testified that since the landlord was hospitalized, he had no means to pay his rent, and he has the monies ready to pay as soon as the landlord arrives home from hospital.

Analysis

14. 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.*

(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.*

15. The tenant was in rent arrears in excess of the 5 days when the termination notice was served. On the date of termination, 18-February-2024 the tenant was still in arrears. In accordance with Section 19 of the *Residential Tenancies Act, 2018* as stated above, the termination notice meets the requirements of the *Act* and would normally be a valid notice, however in this situation, the tenant was unable to fulfill his duties to pay his rent to the landlord as the landlord was hospitalized. This is out of the tenant's control and as all rent transactions were paid in cash, I accept that the tenant had full intentions of paying his rent to the landlord when he arrived home from the hospital.

16. With regards to the representative's statement that he believes that rent has not been paid for a long time because there is no trace of payment through his father's bank deposits does not prove that rent has not been paid in the past, and as such I find that the representative did not prove his case. I accept the tenant's testimony that rent is outstanding for 2 months only because he had no means to pay it.

17. I find that although the termination notice meets the timelines as stated in the *Act*, due to the circumstances surrounding this situation, I deem the termination notice to be invalid.

Decision

18. The termination notice given on 7-February-2024 is an invalid notice.

19. The landlord's claim for an order for vacant possession of the rented premises does not succeed.

20. The tenant may remain at the residential premises until such time as a proper termination notice is received.

Summary of Decision

21. The termination notice dated 7-February-2024 is deemed invalid.
22. The landlord's claim for vacant possession of the rented premises does not succeed.
23. The tenant may remain at the residential premises until such time as a proper termination notice is received.

March 12, 2024

Date



Pamela Pennell
Residential Tenancies Office