

Residential Tenancies Tribunal

Application 2024-0247-NL & 2024-0271-NL

Michael Reddy
Adjudicator

Introduction

1. Hearing was called at 9:02 AM on 6 May 2024. The hearing was to adjudicate two separate applications: 2024-0247-NL and 2024-0271-NL.
2. [REDACTED], hereinafter referred to as "the tenant", attended the hearing.
3. [REDACTED], hereinafter referred to as "landlord1", attended the hearing.
[REDACTED], hereinafter referred to as "landlord2", attended the hearing.

Preliminary Matters

4. The tenant submitted an affidavit with his application stating that he served the landlords with notice of the hearing electronically on 24 April 2024 at 7:08 PM at [REDACTED] and [REDACTED]. The landlords did not dispute this service (**Exhibit T # 1**).
5. Landlord2 submitted an affidavit with his application indicating he served the tenant with notice of the hearing electronically on 6 April 2024 at 11:57 AM at [REDACTED] (**Exhibit L #1**). The tenant did not dispute this service.
6. Both the tenant and the landlords were also served on 24 April 2024 a Notice of Rescheduled Hearing (**Exhibit # 1**).
7. There is a written rental agreement which commenced on 15 February 2023 and is currently a month-to-month agreement. Rent is set at \$1,200.00 due on the first of each month. A security deposit of \$900.00 was paid on 14 February 2023 and is in the landlords' possession.
8. 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.

Issues before the Tribunal

9. The tenant is seeking the following:
 1. Validity of Termination Notice
 2. Order for Compensation in the amount of \$8,715.35

10. The landlords are seeking the following:
 1. Premises vacated
 2. Order for Compensation in the amount of \$1,800.00

Legislation and Policy

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

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

Issue 1: Validity of Termination Notice/ Vacant Possession of the Rental Premises

Tenant Position

13. The tenant, along with his application, submitted a copy of a termination notice he was issued on 30 September 2023 with a request for him to vacate the two-bedroom basement apartment located at [REDACTED] by 31 December 2023 (**Exhibit T #2**). He testified he was served this Notice via electronic mail.

14. The tenant testified this termination notice was issued to him because the landlords did not like him using curry while cooking. He described the termination notice as a “human rights violation” based on his cooking practices. The tenant stated after being informed of concerns by the landlords with his use of curry, he stopped using this spice.

Landlords Position

15. Landlord2 did not dispute they issued the tenant a no cause termination notice which met the required timelines of the *Residential Tenancies Act, 2018*. He disputed the tenant’s claim of human rights concerns.

16. Landlord1 testified she experienced health concerns which are caused by the smell of spices which included curry.

Analysis

17. The notice was served under Section 18 of the *Residential Tenancies Act, 2018* which 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

- (a) not less than 4 weeks before the end of a rental period where the residential premises is rented from week to week;**
 - (b) not less than 3 months before the end of a rental period where the residential premises is rented from month to month; and**
 - (c) not less than 3 months before the end of the term where the residential premises is rented for a fixed term.**
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(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.**
18. In order to receive an order for vacant possession, a landlord must have issued a valid termination notice. To be valid, a termination notice must comply with all relevant sections of the Act.
19. The standard termination notice submitted by the tenant meets the requirements of not less than 3 months before the end of a rental period where the residential premises is rented month-to-month, as per section 18(2)(b).
20. In accordance with section 18(9), the termination notice was provided on 30-September-2023 prior to the first day of the rental period, it stated the termination date of 31-December-2024 which was the last day of the rental period, and was served electronically, which is acceptable as per section 35. However, the termination notice does not demonstrate full compliance with section 18(9). Section 18(9)(a) is clear in that a notice under this section must be “signed by the person providing this notice”. The termination is not signed, rendering it invalid.
21. The tenant stated that the landlords discriminated against and as such has contravened his human rights under the *Human Rights Act*. This tribunal's jurisdiction applies to the *Residential Tenancies Act* where the relationship of a landlord and tenant exists in respect of residential premises. This jurisdiction does not extend to determining whether or not there is a violation of the *Human Rights Act*, and individuals who feel discriminated against or harassed have the ability to file a complaint with the *Human Rights Commission*.

Decision

22. The termination notice dated 30 September 2023 with a request for the tenant to vacate by 31 December 2023 is an invalid notice.

Issue 2: Compensation

Tenant Position

23. The tenant was seeking compensation in the amount of **\$8,715.35** which he testified he would incur due to having to move to another residence. Along with his application, the tenant provided a Compensation for Costs of Inconvenience (**Exhibit T # 3**). He broke down this compensation as follows:
- \$300 difference in rent for 12 months= \$3,600.00
 - \$49.99 (before taxes) internet services for 12 months= \$599.88
 - \$4,195.47 for furniture as per detail in letter= \$4,195.47
 - Moving costs= \$300.00
 - Mediation costs= \$20.00

24. The tenant did not offer any testimony about these costs aside from saying that due to the rental being furnished, he would have to purchase furniture for his new rental. He did provide a hearing expense receipt (**Exhibit T # 4**) and was seeking \$20.00 hearing fee compensation.

Landlords Position

25. The landlords were seeking compensation in the amount of **\$1,800.00**. Along with their application, they provided a Compensation for Costs of Inconvenience (**Exhibit L # 2**). This amount of compensation was broken down in the loss of rent at market value due to the tenant's failure to vacate which rendered them unable to affect renovations which would allow the apartment to be rented at current market value. Along with their application, they also provided a hearing expense receipt (**Exhibit L # 3**).

Analysis

26. As per Section 47, compensation for inconvenience can be awarded in instances whereby tenants incur costs they would not normally incur as a direct result of a contraventions of the Act or rental agreement. In this instance, the tenant has not demonstrated that costs were incurred. However, as the tenant's application was successful, his claim for the \$20.00 filing fee succeeds.

26. In regard to the landlords claims for compensation, as previously noted, the termination notice has been deemed invalid. There is no evidence that the tenant has acted in contravention of the Act.

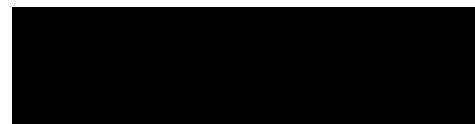
Decision

27. The tenant's claim for compensation for the hearing expense of \$20.00 succeeds.
28. The landlords' claim for compensation fails.

Summary of Decision

30. The tenant's claim for compensation of \$20.00 for the hearing expense succeeds.
31. The landlords claim for a vacant possession order fails.

23 July 2024
Date



Michael Reddy, Adjudicator
Residential Tenancies Office