

Residential Tenancies Tribunal

Application 2024-0280-NL

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 9:15 AM on 7 May 2024 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant”, attended the hearing.
3. The respondent, [REDACTED], hereinafter referred to as “the landlord”, did not attend the hearing. A fifteen minute ‘grace period’ was extended.

Preliminary Matters

4. 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 tenant provided an affidavit of service confirming he served the landlord an Application for Dispute Resolution personally on 5 April 2024 (**Exhibit T # 3**). As the landlord was properly served, and as further delay in the proceedings would unfairly disadvantage the tenant, I proceeded with the hearing in her absence.
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.

Issues before the Tribunal

6. The tenant is seeking validity of the termination notices provided.

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in Sections 46 and 47 of the *Act*.
8. Also relevant and referred to in this decision are Sections 19, 20, 34 and 35 of the *Act*; and Residential Tenancies Program Policy 7.

Issue 1: Validity of Termination Notices Issued

Relevant Submissions:

9. The details of the claim were presented as a written one-year fixed term agreement beginning 15 November 2023 (Exhibit T # 1), with rent set at \$550.00 and due on the 20th of each month. There was a security deposit collected on this tenancy in the amount of \$412.00 on 15 November 2023 which remains still in the possession of the landlord. The tenant moved into the rental 8 on 25 November 2023 and remains in the property on the date of the hearing (7 May 2024). The rental unit is a single home with each tenant renting a bedroom and access to a kitchen area, common room and laundry room facilities.
10. The landlord served the tenant a Landlord's Notice to Terminate Early - Cause under Section 20 of the Residential Tenancies Act (the Act) on 17 March 2024 with a request for the tenant to be out of the rental by 17 March 2024 (Exhibit T # 1).
11. On 26 March 2024, the landlord served the tenant a Landlord's Notice to Terminate Early- Cause under Section 19 of the Act with a request for the tenant to be out of the rental by 26 March 2024 (Exhibit T # 2).
12. The tenant testified during the hearing that the Section 20 Notice was issued to the tenant by it being placed under his bedroom door. The tenant testified he had been issued the Section 19 Notice by it being placed on the doorway of his bedroom of the rental.
13. Additionally, the tenant also offered undisputed testimony that the rental arrears that he initially incurred were cleared in full at the time of the hearing.

Analysis

14. As per Residential Tenancies policy 7-01, "if a termination notice is already in place and a second notice is issued by the same person whereby the termination date is later than that specified in the first notice, then the person issuing the second notice has thereby indicated that they are intending the tenancy to be extended to the date set out in the second notice." As the first notice to terminate under section 20 of the *Act* is not enforceable, determination of its validity serves no purpose. The validity of the second notice to terminate under section 19 will be determined.

15. Section 19 or the RTA 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.

16. The Section 19 Notice (Exhibit T # 2) issued to the tenant was not signed by the landlord, nor did it provide the required notice period of not-less-than-10 days. In accordance with RTA Section 19, the termination notice dated 26 March 2024 is invalid.

Decision

17. The notice of termination issued to the tenant is invalid.

12 June 2024
Date



Residential Tenancies Office