

Residential Tenancies Tribunal

Application 2024-0392-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 5-June-2024 at 1:45 pm.
2. The applicant, [REDACTED], hereinafter referred to as the landlord, attended via teleconference. His wife, [REDACTED], also attended via teleconference.
3. The respondent, [REDACTED], hereinafter referred to as the tenant, also attended via teleconference.

Preliminary Matters

4. The tenant acknowledged he received notice of the hearing at least ten clear days before the start of the hearing.
5. The disposition of the security deposit was already determined in 2024-0276-NL. It will therefore not be discussed further here.

Issues before the Tribunal

6. Is the termination notice dated 16-February-2024 valid?
7. Should the landlord's claim for compensation for inconvenience succeed?
8. Should the landlord's claim for possessions returned be granted?
9. Should the landlord's claim for unpaid rent succeed?

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* (the *Act*).
11. Also referenced and referred to in this decision are sections 18 and 34 of the *Act*, reproduced here:

Notice of termination of rental agreement

18. (1) A tenant shall give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises

(a) not less than 7 days before the end of a rental period where the residential premises is rented from week to week;

(b) not less than one month before the end of a rental period where the residential premises is rented from month to month; and

(c) not less than 2 months before the end of the term where the residential premises is rented for a fixed term.

...

(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.

Requirements for notices

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.

Issue 1: Validity of Termination Notice

Landlord's Position

12. The landlord submitted a copy of a termination notice (LL#1) dated 16-February-2024 which was, he says, the only notice he received from the tenant aside from a text message received 31-January-2024. He submits that it is invalid.

Tenant's Position

13. The tenant submitted that as far as he was aware, the termination notice he gave was sufficient. He testified that he did provide one other notice, a text message sent on 31-January-2024, sent at 10:17 pm. A copy of this text message was provided (T#1).

Analysis

14. To be valid, a termination notice must comply with all relevant sections of the *Act*. LL#1 is not in the form prescribed by the minister. However, according to s. 22(f) of the *Interpretation Act*, RSNL 1990, where a form is prescribed, deviations from the form not affecting the substance nor calculated to mislead, do not invalidate the form used. LL#1 does not contain the name or address of the recipient. This is sufficient to render LL#1 invalid under s. 34(b) of the *Act*.
15. The termination notice dated 16-February-2024 is invalid.
16. T#1 will be discussed further in Issue 4, below.

Issue 2: Compensation for Inconvenience

Landlord's Position

17. The landlord says that the premises were left in an unclean state when the tenant vacated the property. They say their property management company cleaned the property for them, at the cost of \$103.50. This was for three hours labour at \$30/hour, plus HST. No receipt or invoice was provided. The landlord said they had requested the receipt but the company had advised them it would not be available until the day after the hearing.

Tenant's Position

18. The tenant denies that he left the premises in an unclean state.

Analysis

19. The landlord testified under solemn affirmation that the tenant left the premises in an unclean state. The tenant testified under solemn affirmation that he did not leave the premises in an unclean state. The tenant provided photographic evidence of the property from when he vacated (T#28-T#31). The premises appear clean in these photos.
20. Based on the evidence in its totality, I do not find on a balance of probabilities that the tenant left the premises an unclean state. The landlord's claim for compensation for inconvenience fails.

Issue 3: Return of Possessions

Landlord's Position

21. The landlord claims for the return of a lawnmower and an edge trimmer. During the tenancy, both of these items were bought by the tenant as improvements for the premises in exchange in lieu of rent. The landlord testified that these items were then missing when the tenant vacated the premises and conclude that the tenant must have taken them.

Tenant's Position

22. The tenant testified that the items were in the premises when he vacated, specifically in the crawlspace. He testified that several other people had access to the rental property including multiple property management teams, former tenants, and at least one neighbour.

Analysis

23. In order to succeed in their claim, the landlord must establish on a balance of probabilities that the tenant deprived them of these items by a wilful or negligent act. They have no direct evidence that the tenant took or destroyed the items. They rely on the fact that the items were not present after the tenant left and they retook possession of the property.
24. If it was established that no one else had access to the property in the interim, I could logically infer that the items' disappearance was caused by the tenant. However, the tenant testified that several other individuals had access to the property and could have taken or moved the items. The landlord did not refute this.
25. Considering the evidence in its totality, I do not find on a balance of probabilities that the tenant deprived the landlords of these possessions. The landlord's claim for the return of personal possessions fails.

Issue 4: Unpaid Rent

Landlord's Position

26. The landlord seeks unpaid rent in the amount of \$1100, which represents the full monthly rent for the month of March 2024. The tenant vacated on 29-February-2024, so the landlord is seeking rent in lieu of notice.

Tenant's Position

27. The tenant maintained that he provided proper notice to the best of his ability.

Analysis

28. As noted in Issue 1, above, LL#1 was invalid. Even if it had provided the required information, LL#1 was sent on 16-February-2024, less than 30 days before the tenant vacated.
29. T#1 is a text message from the tenant to the landlord and is the first time the tenant told the landlord he would be vacating. T#1 is not in the form prescribed by the minister. As noted above, this is not sufficient to render it invalid. However, it does not contain the address of the recipient. This is contrary to s. 34(b) of the *Act* and is sufficient to render the notice invalid.
30. Even if T#1 had complied with s. 34 and s. 18(9) of the *Act*, it was sent electronically at 10:17 pm. S. 35 of the *Act* deals with the service of notices and other documents. S. 35(6) reads as follows:
35. ...
- (6) For the purpose of this section, where a notice or document is sent electronically, it shall be considered to have been served on the day it is sent, if the document is sent by 4 p.m., or the next day that is not a Saturday or holiday, if the document is sent after 4 p.m.
31. Since the notice was sent after 4 pm, s. 35(6) of the *Act* means it was deemed to have been served on 1-January-2024. It was therefore provided less than one month before the termination date, in contravention of s. 18(1)(b).
32. The landlord's claim for rent in lieu of notice succeeds in the amount of \$1100.

Decision

33. The termination notice dated 16-February-2024 is invalid.
34. The landlord's claim for compensation for inconvenience fails.
35. The landlord's claim for the return of possessions fails.
36. The landlord's claim for unpaid rent succeeds in the amount of \$1100.
37. As the landlord was partially successful in their application, they are entitled to have their hearing expenses covered. The landlord claims for the \$20 application fee as well as the cost of registered mail and the fee charged by a notary public. As no receipt was provided for the registered mail or the notary public's fee, I decline to grant these costs. The landlord is awarded \$20 for the application fee.

Summary of Decision

38. The termination notice dated 16-February-2024 is invalid.

39. The tenant shall pay to the landlord \$1120.00 as follows:

Unpaid Rent.....	\$1100.00
Hearing expenses.....	\$20.00
Total.....	\$1120.00

23-July-2024

Date



Seren Cahill
Residential Tenancies Office