

Residential Tenancies Tribunal

Application 2024-0411-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 2-July-2024 at 9:03 am.
2. The applicant, [REDACTED], hereinafter referred to as the tenant, attended via teleconference.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as the landlords, also attended via teleconference.

Preliminary Matters

4. The landlords acknowledged they received notice of this hearing more than ten days before the hearing date.

Issues before the Tribunal

5. Is the termination notice dated 1-May-2024 valid?
6. Should the tenant's claim for a refund of rent succeed?
7. Should the tenant's claim for compensation for inconvenience succeed?

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Act*.
9. Also considered and referred to in this hearing are subsections 18(2) and 18(9) as well as section 34 of the *Act*, as follows:

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.

(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

Tenant's Position

10. The tenant submitted a copy of a termination notice (T#1) she says the landlords served on her 2-May-2024. She indicated she believed this was retaliatory because she refused to pay a security deposit several years after moving into the premises.

Landlord's Position

11. The landlords deny that the notice was retaliatory. They say they agreed the tenant ought not to pay a security deposit.

Analysis

12. To be valid, a termination notice must comply with all relevant sections of the *Act*. T#1 is in writing but not in the form prescribed by the minister, contrary to s. 34(a) of the *Act*, above. However, s. 22(f) of the *Interpretation Act, RSNL 1990* states that where a form

is prescribed, deviations from the form not affecting the substance nor calculated to mislead, do not invalidate the form used. Therefore, T#1 is not invalid merely because it is not in the form prescribed by the minister. T#1 contains the first name of the recipient but does not contain the address. This renders it invalid under s. 34(b) of the *Act*. Even if it did, it does not identify the section it is issued under. This renders it invalid under s. 34(d).

13. The termination notice dated 1-May-2024 is invalid.

Issue 2: Refund of Rent

Tenant's Position

14. The tenant seeks a refund of rent in the amount of \$1200, representing the difference between what she says she agreed to pay and what she ended up paying. She testified she had a verbal agreement with the previous owners of the building where she paid \$700/month, utilities included. The respondents took ownership of the building in September 2023. The tenant testified that starting in October she was asked to pay the utilities bill, amounting to \$150, which she then had transferred into her name, and she was partially reimbursed. The tenant admitted she had trouble remembering the exact amounts she paid. She testified that it was about \$100 a month, which she multiplied by twelve months to get that \$1200 total. She testified that she moved out of the apartment the day before the hearing. When pressed, she agreed this was nine months, and \$900 would be a more appropriate claim.

Landlord's Position

15. The landlords testified that after they took ownership of the building, they were told by the previous owner that due to the way the apartment was wired, the tenant had been paying the hot water bill for all four units in the building. They say they did not bring it to the tenant's attention immediately because they needed time to calculate how the bill should be split. They say that the tenant realized the situation and became irate, causing a confrontation. They say they reimbursed her for everything except her portion of the hydro bill, which was \$45 a month, and that she agreed to pay this. They say that they advised the tenant on 1-May-2024 that increased utilities cost would require her to pay a total of \$850 per month effective 1-June-2024, which they say she agreed to.

Analysis

16. The tenant submitted no record of the claimed overpayments and has difficulty remembering the details. She provided some emails between her and the landlord (T#2, pages 11-26). They do not support her claim that she was overpaying by about \$100 a month. They show that the landlords agreed to her not paying a security deposit, a fact which she omitted during her testimony on issue 1 (LL#2 page 13). They do align with everything the landlords testified to. The tenant's story was vague. Her narrative was unclear and meandering.
17. I find the tenant's testimony to be unreliable. Given that it is unsupported by any corroborating evidence, I find it is insufficient to support her claim.

18. This tenant's claim for a refund of rent fails.

Issue 3: Compensation for Inconvenience

Tenant's Position

19. The tenant testified that she had a fixed term agreement for three years, from August 2022 to August 2025. She says the landlord's behaviour forced her to move, breaching the agreement. She therefore seeks \$3600 in compensation, representing the difference between what she had originally budgeted for rent and what she pays in her new apartment.

Landlord's Position

20. The landlords are opposed to the tenants' claim. They say they attempted to work with the tenant and resolve her issues.

Analysis

21. Section 8(2)(c) of the *Act* states that where a residential premises is rented for a period that is more than 12 months, the residential premises shall be considered to be rented for a fixed term of 12 months. A three-year fixed term agreement started August 2022 would have ended in August 2023.

22. Regardless, the tenant chose to leave the apartment. The landlords did not attempt to receive or enforce an order of vacant possession. The tenant's claim for compensation for inconvenience fails.

Decision

23. The termination notice dated 1-May-2024 was invalid.

24. The tenant's claim for a refund of rent fails.

25. The tenant's claim for compensation for inconvenience fails.

26. The tenant asked to have her hearing expenses reimbursed. She was unsuccessful in any of her claims for compensation. Her claims were not supported by any supplementary evidence. It would not be appropriate to award hearing expenses.

Summary of Decision

27. The termination notice dated 1-May-2024 is invalid.

26-July-2024

Date


Seren Cahill
Residential Tenancies Office