

Residential Tenancies Tribunal

Application 2024-0448-NL & 2024-0525-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 25-July-2024 at 9:04 am.
2. The applicant, [REDACTED], hereinafter referred to as the tenant, attended via teleconference.
3. The respondent, [REDACTED], hereinafter referred to as the landlord, was represented at the hearing by [REDACTED] of [REDACTED], who also attended via teleconference.

Preliminary Matters

4. The respondent acknowledged they received notice of this hearing more than ten days before the hearing date. The applicant acknowledged they received notice of the counterclaim more than ten days before the hearing date.
5. For clarity, the tenant applied to have the validity of a termination notice determined. The landlord applied for an order of vacant possession. As a valid termination notice is a requirement to receive an order of vacant possession, the issue raised by the landlord includes the issue raised by the tenant. For that reason, only one issue is determined below despite the existence of a claim and counterclaim.

Issues before the Tribunal

6. Should the landlord's claim for an order of vacant possession succeed?

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Act*.
8. Also considered and referred to in this decision are sections 18(2), 18(9), and s. 34 of the *Act*, reproduced below:

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: Vacant Possession

Landlord's Position

9. The landlord submits that they provided a valid termination notice (LL#1), that the termination date contained has passed, that the tenant has not vacated the premises, and that they are therefore entitled to receive an order for vacant possession.

Tenant's Position

10. The tenants testified that he believed the termination notice to be invalid as it was retaliatory. He testified that an unfortunate misunderstanding led to an altercation between himself and a maintenance person who entered the rental premises without

notice the day before he received the termination notice. He speculated that the other reason he might have been evicted was an allegation that he was overdue on rent.

Analysis

11. In order to receive an order for vacant possession, a landlord must first serve a valid termination notice. To be valid, a termination notice must comply with all relevant sections of the *Act*.
12. LL#1 is a termination notice in writing in the form prescribed by the minister. It contains the name and address of the recipient. It identifies the residential premises which it regards. It states the section of the *Act* it was given under. It therefore complies under with s. 34 of the *Act*.
13. LL#1 was signed by a representative of the landlord who provided it. It was given the day before the first day of the relevant rental period. It states the date on which the residential tenancy agreement is to terminate, and that date is the last day of a rental period. It was served on the tenant personally in accordance with s. 35(1)(a) of the *Act*. LL#1 therefore complies with s. 18(9) of the *Act*.
14. The residential tenancy agreement is a month-to-month. LL#1 was issued on 29-February-2024 and gives a move out date of 31-May-2024. LL#1 provides 3 full months' notice as required by s. 18(2)(b) of the *Act*.
15. The tenant submits that LL#1 is retaliatory. S. 29(1) of the *Act* reads as follows:

Termination for invalid purpose

29. (1) A landlord shall not

(a) terminate or give notice to terminate a rental agreement; or

(b) directly or indirectly coerce, threaten, intimidate or harass a tenant or a member of a tenant's family,

in retaliation for, or for the purpose of deterring the tenant from, making or intervening in a complaint or application in relation to a residential premises.

16. The tenant testified that he believed that the termination notice was retaliatory as he received it the day after he had an altercation with a maintenance person. The landlord testified that the property management company issues the notices but decisions as to when to evict tenants are made by the owner, and that the eviction process would have begun before the date of the altercation.
17. The tenant suggested in the alternative that the termination notice may have been issued in relation to allegations of unpaid rent, but this was only speculative.
18. Considering the totality of the of the evidence I find on a balance of probabilities that the termination notice is not retaliatory.
19. LL#1 is a valid termination notice.

Decision

20. The tenancy terminated on 31-May-2024. Insofar as the tenant is still residing at the premises, he is doing so illegally.

Summary of Decision

21. The tenant shall vacate the premises immediately.
22. The tenant shall pay to the landlord any costs charged to the landlord, by the Office of the High Sherriff, should the landlord be required to have the Sheriff enforce the attached Order of Possession.

14-August-2024

Date


Seren Cahill
Residential Tenancies Office