

Residential Tenancies Tribunal

Application 2024-0481-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 4-July-2024 at 9:02 am.
2. The applicant, [REDACTED], hereinafter referred to as the tenant, attended via teleconference.
3. The respondent, [REDACTED], was represented at the hearing by her authorized representative [REDACTED], who also attended via teleconference.

Preliminary Matters

4. The respondent's representative acknowledged on the record that the respondent was served notice more than ten days before the date of the hearing.

Issues before the Tribunal

5. Is the termination notice dated 16-May-2024 valid?

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).
7. Also considered and referred to in this decision are sections 18(2), 18(9), 29, and 34, as 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.

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.

(2) Where a tenant who is served with a notice of termination of a rental agreement believes that the landlord has contravened subsection (1), he or she may, not later than one month after receiving the notice, apply to the director under section 42 for an order declaring that the rental agreement is not terminated.

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

8. The tenant submits that the termination notice dated 16-May-2024 was retaliatory and therefore invalid. She testified that she told the landlord on 9-May-2024 that rental unit's oven was no longer working. She says the landlord sent a repair person and it was determined that repair would be prohibitively expensive, so she sought a replacement. The tenant says she attempted to help the landlord locate a replacement, but the landlord found one herself, which was delivered on 15-May-2024. She told the landlord the oven did not function and was inadequate. A short argument followed. The next day, she received the termination notice.

Landlord's Position

9. The landlord's representative did not dispute the timeline. She testified that the landlord felt frustrated with the tenant and found the tenant difficult. She added that the landlord provided a 3 month without cause notice and believes this to be a valid process.

Analysis

10. The tenant provided a copy of the email conversation between the parties (T#1). She also provided a photo of the stove in question (T#2). The picture shows a significant amount of rust around the burners. The tenant also testified that the drawer at the bottom of the stove was stuck in the closed position, the oven sat at an angle and could not be leveled, and that there was only rack in the oven. This rack, she says, was forced in upside down so it could not be removed and could not be used. She added that the stove was very old and lacked some of the features she was accustomed to (a preheat button, self-cleaning, etc.).
11. Where a person rents an apartment that includes an appliance like an oven, and that appliance breaks through no fault on the tenants during the tenancy, the landlord is required to replace it with another model of at least the same quality.
12. The tenant provided a copy of the termination notice she received from the landlord (T#3). T#3 is in writing in the form prescribed by the minister. It contains the name and address of the recipient. It identifies the residential premises it concerns. It identifies as being given under s. 18(2)(b) of the *Act*. It therefore complies with s. 34.
13. LL#3 was signed by the landlord who issued it. It was issued 14 days before the beginning of the relevant rental period. It states the date on which the tenancy will end as 31-August-2024, the last day of a rental period. It was served electronically in accordance with s. 35(2)(f) of the *Act*. It therefore complies with s. 18(9).
14. LL#3 was issued on 16-May-2024 and the termination date is 31-August-2024. It therefore provides more than 3 months' notice. It therefore complies with s. 18(2)(b) of the *Act*.
15. The only remaining question is whether the notice was retaliatory under s. 29(1)(a). A termination notice is invalid if it is given for an invalid purpose.

16. Having considered the evidence in its totality, I conclude on a balance of probabilities that the landlord issued LL#3 for the purpose of deterring the tenant from making an application in relation to this rental premises. Specifically, I infer it was to deter the tenant from making an application for repairs to be made.
17. The termination notice is therefore invalid under s. 29(1)(a) of the *Act*.

Decision

18. The termination notice dated 16-May-2024 is invalid.

24-July-2024

Date

A black rectangular box redacting the signature of Seren Cahill.

Seren Cahill
Residential Tenancies Office