

Residential Tenancies Tribunal

Application 2024-0600-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 14-August-2024 at 9:04 am.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as the tenants, attended via teleconference.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as the landlords, were represented at the hearing by their counsel, [REDACTED]. [REDACTED] also attended on her own behalf.

Preliminary Matters

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

Issues before the Tribunal

5. Are the termination notices dated 30-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 s. 18(2), 18(5), 18(9), and s. 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.

...

(5) Notwithstanding subsections (1) to (3), a notice of termination is not required to be given where a landlord and a tenant agree in writing to terminate the rental agreement on a specific date.

...

(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

Tenants' Position

8. The tenants produced a copy of a termination notice they said the landlords served on them, marked as T#1. They say it is invalid as it was dated well before it was served on them, and they suggest it was signed after the date it purports to have been signed on.

Landlords' Position

9. The landlords acknowledge that T#1 may have defects on its face. They drew my attention to another termination notice in the form of a text message sent 30-May-2024 (T#2) and testified that another such notice was provided on 1-June-2024. They submit

that I should consider the relationship and the correspondence regarding termination holistically. They suggest the tenants are using their knowledge of the process to receive more notice than they would be otherwise entitled to. They also submitted that the tenants and the landlords effectively agreed to a termination date in writing as provided under s. 18(5).

Analysis

10. To be valid, a termination notice must comply with all relevant sections of the *Act*.
11. T#1 is a landlord's notice to terminate written in the form prescribed by the minister. It contains the name and address of the recipient, though it omits the postal code. It identifies the residential premises it regards. It states the section of the *Act* which it is issued under, though the boxes used to indicate the specific subsection have been left unticked.
12. T#1 was signed by the landlords who provided it. It is dated 30-May-2024, but the tenants testify that it was given to them on 5-June-2024. The landlords did not dispute this testimony and I accept it. This contradicts s. 18(9)(b) of the *Act*, which requires that a notice be given no later than the first day of a rental period. T#1 is therefore invalid.
13. I note that T#1 gives a move out date of 30-July (presumably 2024), which is less than three full months notice as required by section 18(2)(b).
14. T#2 is written but is not in the form prescribed by the minister. However, s. 22(f) of the *Interpretation Act*, RSNL 1990 c I-19 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. Not being in the form prescribed by the minister therefore does not by itself render T#2 invalid. It does not include the address of the recipient. This renders it invalid under s. 34(b) of the *Act*. I note also that T#2 was issued on 30-May-2024 gives a termination date of 30-July-2024, which provides only two months notice.
15. Oral testimony was provided of another termination notice which the landlords say was delivered on 1-June-2024. The tenants deny they received this notice. In either case, the notice was not produced before me and I do not have sufficient evidence before me to rule on its validity.
16. The landlords argue that an agreement exists or existed to terminate the residential tenancy relationship on 31-August-2024. The tenants deny there was ever an agreement. Strictly speaking, this is not relevant to the determination of whether a termination notice is valid, and I could decline to make a finding on this ground. Nevertheless, determining the rights and obligations of the landlord and tenant regarding the presence or absence of an agreement to terminate would provide clarity to both parties regarding the issue at the heart of this hearing, i.e., when and if the tenants are required to vacate the premises. Therefore, I will speak to the matter briefly, without prejudice against any further applications that may rely on such an agreement.
17. Parties agree to the following facts. The tenants sent an email on 17-July-2024 suggesting 31-August-2024 would be an appropriate date for the agreement to end. The

landlords agreed and brought to the tenants a written agreement for the parties to sign to settle the matter. At this time the tenants refused to sign.

18. S. 18(5) of the *Act* states that a termination notice is not required when a landlord and tenant agree in writing to a termination date. In the present case, the landlord suggests that there was an agreement between the landlord and tenant, in the form of the email correspondence between them. Such an agreement would require a definite offer and an unqualified and unconditional acceptance of that offer in writing. No evidence of such an acceptance was put before me in the present case.

Decision

19. The termination notices dated 30-May-2024 are invalid.

22-August-2024

Date


Seren Cahill
Residential Tenancies Office