

Residential Tenancies Tribunal

[REDACTED] Decision 21-0012-03

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:20 am on 22 April 2021 via teleconference.
2. The applicant, [REDACTED] ("[REDACTED]") participated in the hearing. He was represented by [REDACTED] ("[REDACTED]").
3. The respondent, [REDACTED] ("[REDACTED]") also participated in the hearing. She was represented by her lawyer, [REDACTED] ("[REDACTED"]"), from the law firm [REDACTED]
[REDACTED].

Issues before the Tribunal

4. [REDACTED] is seeking an order for vacant possession of the rented premises.

Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
6. Also relevant and considered in this case are sections 2, 3, 7 and 18 of the *Residential Tenancies Act, 2018* and the *Rental Agreement Notice Regulations*.

Issue 1: Jurisdiction

Relevant Submissions

[REDACTED]'s Position

7. [REDACTED] stated that he had not entered into any written agreement or any verbal agreement with [REDACTED] concerning the property identified on his application, and he

testified that there was no agreement that [REDACTED] would pay him any rent for the use and occupation of that property.

8. However, [REDACTED] argued that there was an implied rental agreement between [REDACTED] and [REDACTED] and he recited section 7.(3) of the *Residential Tenancies Act, 2018* which states:

Provision of rental agreement and information

7. (3) Where a landlord and tenant enter into an oral or implied rental agreement, the landlord shall provide the tenant with a written notice containing the information prescribed in the regulations within 10 days after entering into the rental agreement, and where requested by the landlord, the tenant shall sign an acknowledgement of receipt.

9. [REDACTED] stated that [REDACTED] was served with a termination notice on 24 July 2020, requiring that she vacate on 01 November 2020. That notice was issued under section 18 of the *Residential Tenancies Act, 2018* and a copy of that notice was submitted with [REDACTED]'s application ([REDACTED] #1).
10. [REDACTED] argued that that termination notice meets the requirements set out in section 7.(3), quoted above, meaning that there was an implied rental agreement in place between [REDACTED] and [REDACTED].

[REDACTED]'s Position

11. In response to the landlord's application, [REDACTED] submitted a letter from [REDACTED] ([REDACTED] #1) in which she points to the following subsections of section 3 of the *Residential Tenancies Act, 2018*, which state:

Application of Act

3. (3) The relationship of landlord and tenant shall be considered to exist in respect of residential premises where the tenant

- (a) uses or occupies residential premises and***
 - (i) has paid or agreed to pay rent to the landlord, or***
 - (ii) a governmental department or agency has paid or has agreed to pay rent to the landlord;***
- (b) makes an agreement with the landlord by which the tenant is granted the right to use or occupy residential premises in consideration of the payment of or the promise to pay rent; or***
- (c) has used or occupied residential premises and***
 - (i) has paid or agreed to pay rent to the landlord, or***

(ii) a governmental department or agency has paid or agreed to pay rent to the landlord.

12. [REDACTED] stated, reiterating [REDACTED]'s own testimony, that [REDACTED] had never paid [REDACTED] any rent and that [REDACTED] had never entered into any written or verbal agreement with [REDACTED] whereby she promised she would pay him any rent for use of that property. In that respect, [REDACTED] argues that [REDACTED] is not a landlord, that [REDACTED] is not a tenant, and that there does not exist any landlord-tenant relationship between them.
13. [REDACTED] stated that this application arises out of a dispute between [REDACTED] and his brother, [REDACTED], who is [REDACTED]'s husband. That dispute concerns the ownership of the property in question and [REDACTED] writes that that matter will soon be addressed in a Quieting of Titles application in the Supreme Court. She argued that a hearing at this Tribunal was not the appropriate venue through which that dispute should be resolved and she requested that [REDACTED]'s application be dismissed.

Analysis

14. I agree with the arguments presented by [REDACTED].
15. Both [REDACTED] and [REDACTED] presented evidence, in the form of indentures of conveyances, as well as references to various court cases and appeals that [REDACTED] and [REDACTED] had been involved in, regarding the ownership of the property under dispute here. But this Tribunal has neither the competence, authority nor jurisdiction to deal with those matters and I agree with [REDACTED] that it should be addressed through the Supreme Court.
16. This Tribunal's jurisdiction is solely confined to the administration of the *Residential Tenancies Act, 2018* and that *Act* only applies where there exists a relationship of landlord and tenant, as quoted in paragraph 11, above. Crucially, in that description of the landlord-tenant relationship, is the issue of the payment of rent in exchange for the use and occupation of residential premises. Even if it is eventually found that [REDACTED] is in fact the owner of the property under discussion here, [REDACTED] and [REDACTED] both agreed that there was never any payment of rent nor any promise of a payment of rent.
17. I do not accept [REDACTED]'s claim that there was an implied rental agreement between [REDACTED] and [REDACTED]. An implied rental agreement is one in which, although there is no express written or verbal agreement, the actions of the parties can only be explained as if there was such an agreement—*viz.* one party enjoys and occupies a property belonging to another in exchange for a payment of rent. But, again, without an exchange of rent, the actions of the parties just do not meet that description.
18. Furthermore, the termination notice issued to [REDACTED] on 24 July 2020 is a totally distinct notice from a notice outlining the terms, required in the prescribed regulations (<https://assembly.nl.ca/Legislation/sr/Regulations/rc180120.htm>), of an implied rental agreement, referenced in section 7.(3) of the *Act*. Termination

notices are notices which state the reason why a tenancy is ending and provide the date by which the tenant must vacate. A notice of an implied rental agreement, on the other hand, only provides implicitly agreed upon information concerning the tenancy, including the rate of rent, the names of the parties, the term of the tenancy, the amount of the security deposit etc. Issuing someone a termination notice does not establish that there exists a rental agreement between them. (I'd also point out that issuing someone a notice under section 7.(3) would not, *ipso facto*, establish that there exists a landlord-tenant relationship between them either. Such a notice is required to be provided where there is an implied rental agreement—it does not follow that where such a notice has been issued that there exists such an implied agreement).

19. Accordingly, I find that as there was no written, verbal or implied rental agreement between [REDACTED] and [REDACTED], they are therefore not in a landlord-tenant relationship. Where there is no landlord-tenant relationship, the *Residential Tenancies Act, 2018* does not apply and this Tribunal, therefore, has no jurisdiction to make any finding or to issue any order concerning the disputes they are involved in.

Decision

20. This matter falls outside the jurisdiction of the Residential Tenancies Tribunal.
21. The applicant's claim is dismissed.

23 April 2021

Date

John R. Cook
Residential Tenancies Tribunal