

Residential Tenancies Tribunal

Application [REDACTED]
[REDACTED]

Decision 21-0076-03

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:12 a.m. on 25-February-2022.
2. The applicant, [REDACTED] hereinafter referred to as “the tenant” attended by teleconference.
3. The respondent, [REDACTED] owned by [REDACTED] submitted an Authorized Representative form (LL#01) naming [REDACTED] as their representative, hereinafter referred to as “the landlord,” she attended by teleconference.
4. The tenant called a witness, [REDACTED] hereinafter referred to as “the witness.”

Preliminary Matters

5. The tenant said that she served the landlord notice of the hearing by email on 04-February-2022; the landlord confirmed service. The landlord submitted an affidavit (LL#02) stating that she served the tenant via email on 10-February-2022 at 9:30 a.m.; the tenant confirmed service.

Issues before the Tribunal

6. The tenant is seeking validity of termination notice and the landlord is seeking vacant possession of the rental premises.

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
8. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 18: Notice of termination of rental agreement and Section 19: Notice where failure to pay rent.

**Issue: Validity of termination notices
Vacant Possession of the Rental Premises**

Landlord's Position

9. The landlord submitted the rental agreement (LL#03). She said that the tenant took occupancy on 01-October-2021 and subsequently signed the agreement on 23-October-2021. The rental agreement is monthly from the 1st day of the month to the last; rent is due on the 1st. On 25-September-2021 the tenant paid a security deposit of \$490.00 and the landlord is still in possession of that deposit.
10. The landlord said that she had served the tenant a number of termination notices. She has provided this tribunal with three:
 - A standard three month notice with a termination date of 01-February-2022
 - A handwritten notice with no termination date
 - And a notice to terminate early for non-payment of rent dated 18-December-2021.
11. The first termination notice (LL#04) is on a "landlord's notice to terminate standard." The landlord said it is a three month notice and that she signed and dated it on 29-October-2021 and it has a termination date of 01-February-2022. The landlord said she sent this electronically to the tenant on 29-October-2022.
12. In the second termination notice citing interference with peaceful enjoyment was dated 12-November-2021 (LL#06), she said that this notice was dated and signed on 12-November-2021. She said that she didn't have the date on it so she wrote up another one and gave it to the witness. This notice was for interference with peaceful enjoyment. The landlord acknowledged that this notice didn't have a termination date and she didn't send in a copy of the actual notice that was served. She understands that this notice is not valid and will not be considered.
13. The final notice the landlord served (LL#05) is on a "landlord's notice to terminate early – cause" form for failure to pay rent. The notice is signed and dated for 06-December-2021 with a termination date for 18-December-2021. The landlord said that she served the tenant electronically on 06-December-2021.
14. The landlord said that she hasn't received rent on the apartment after the first rent was received in October. She said that after she gave the tenant the first termination notice, she contacted the tenant's Social Worker and told her to stop the rent payments. She informed the Social Worker that she had evicted the tenant and that she wasn't to send rent for that apartment. There has been no rent paid with the exception of October.

Tenant's Position

15. The tenant confirmed the details of the rental agreement.
16. The tenant said that the landlord has served her with a number of termination notices. She acknowledges that the first notice was sent to her electronically and she received it the end of October 2021. The tenant questions what that notice is for.
17. The tenant said she doesn't remember the second notice being served. She takes issue with the landlord serving multiple notices.
18. The tenant said that the reason that there has been no rent paid is because the landlord stopped her rent payments and she has been trying to have the payments reinstated.
19. The tenant called her witness, he said that there has been a "witch-hunt" to get the tenant out of her apartment. He said that there have been numerous termination notices given to the tenant and that the landlord stopped the rent payment and is now trying to evict the tenant for not paying rent.

Analysis

20. The second termination notice will not be considered, it is not a copy of the termination notice that was served and it doesn't have a termination date. The landlord acknowledged that this notice isn't valid in paragraph 12.
21. The landlord's first termination notice is a notice to terminate standard, served under Section 18 of the Residential Tenancies Act, 2018: Section 18.(2) states:

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.

22. The landlord stated in paragraph 9 that the rental agreement was for a monthly term and the rental period is from the "1st day of the month to the last." The termination notice was served with a termination date of 01-February-2022; which is the first day or beginning of a rental period, not the last day or end of a rental period as determined in 18.(2)(b). This notice is not valid.

23. The third notice served to the tenant is on a “landlord’s notice to terminate early – cause” form for failure to pay rent. The notice is signed and dated for 06-December-2021 with a termination date for 18-December-2021. The landlord said she served this notice on 06-December-2021. This notice is served under Section 19 of the *Residential Tenancies Act, 2018*, as follows:

Notice where failure to pay rent

19. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),

.....

(b) where the residential premises is

(i) rented from month to month,

(ii) rented for a fixed term, or

(iii) a site for a mobile home, and

*the amount of rent payable by a tenant is **overdue for 5 days or more**, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 10 days after the notice is served on the tenant.*

24. The landlord stated that the tenant has not paid rent since 01-October-2021, which exceeds the 5 days required. However both the landlord and the tenant stated in paragraphs 14 and 18, that the reason the tenant’s rent is not paid is because the landlord stopped the payments provided through income support.
25. The tenant did not fail to pay rent, the action that caused no rent to be paid is that the landlord chose to stop or not receive rent. The landlord did not wait for the tenant’s termination notice to be fulfilled before stopping the rental payments. As this issue is not the fault of the tenant, but rather due to the actions of the landlord; I find that this termination notice is also not valid.

Decision

26. The termination notices served to the tenant with the termination dates of 01-February-2021 and 18-December-2021, are not valid.

Issue 2: Hearing expenses reimbursed \$20.00

27. The landlord (LL#07) and the tenant (TT#01) submitted their receipts for \$20.00 for the cost of the hearing. As the tenant was successful in her claim the landlord shall reimburse the tenant, pursuant to policy 12.01, for the \$20.00 expense to file her claim.

Summary of Decision

28. The termination notices dated 01-February-2021 and 18-December-2021, are not valid.
29. The landlord shall reimburse the tenant for hearing expenses, \$20.00.

March 2, 2022

Date

