

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0204-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:38 pm on 24 June 2021 via teleconference.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED], hereinafter referred to as “the landlord”. The respondent, [REDACTED] hereinafter referred to as “the tenant”, also participated. She was represented by [REDACTED] from [REDACTED].

Issues before the Tribunal

3. The landlord is seeking an order for vacant possession of the rented premises.

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this case are sections 18, 29, 34 and 35 of the *Residential Tenancies Act, 2018*.

Issue 1: Vacant Possession of Rented Premises

Relevant Submissions

The Landlord's Position

6. The landlord stated that she had entered into a 1-year, fixed-term rental agreement with the tenant on 01 April 2020 and a copy of the executed lease was submitted with her application ([REDACTED] #1). The agreed rent was set at \$630.00 per month and the landlord stated that the tenant had paid a security deposit of \$435.00.

7. With her application, the landlord had submitted a copy of a termination notice which she stated had posted on the tenant's door on 29 January 2021 (█ #2). That notice was issued under section 18 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 30 April 2021.
8. The tenant has not vacated the rented premises as required and the landlord is seeking an order for vacant possession of the rented premises.

The Tenant's Position

9. The tenant acknowledged that she had found the termination notice posted to her door on 29 January 2021.
10. The tenant objected to the notice, though, on several grounds.
11. Firstly, she objected to the fact that the notice which she had found on her door had not been placed in an envelope and the content of the notice was visible to anyone who walked past her door.
12. Secondly, the tenant also objected to the notice on the grounds that it was issued in retaliation for complaints that she had made to the landlord about an improper entry into a fellow resident's apartment. She also complained that the landlord had been harassing her about moving out after she had been served with the landlord's application.
13. Because of her concerns about retaliation and harassment, the tenant stated that she had filed her own application with this Tribunal where, among other issues, she is seeking the determination of the validity of the termination notice that had been issued to her.

Analysis

14. The relevant subsections of s.18 of the *Residential Tenancies Act, 2018* state:

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

15. Section 18 of the *Act* allows a landlord to terminate a rental agreement, on 3 month's notice, without having to provide reasons to either the tenant or this Board.
16. Regarding the tenant's concerns about the manner in which the notice was delivered to her, I directed her attention to section 35.(2) of the *Act*, which states:

Service of documents

35. (2) *A notice or other document under this Act other than an application under section 42 shall be served by a landlord on a tenant by*

(a) giving it personally to the tenant;

(b) giving it to a person 16 years of age or older who apparently lives with the tenant;

(c) posting it in a conspicuous place on the tenant's residential premises;

(d) placing it in the tenant's mailbox or under a door in the tenant's residential premises;

(e) sending it to the tenant by prepaid registered mail or prepaid express post at an address

(i) provided by the tenant, or

(ii) where the tenant carries on business;

(f) sending it electronically where

(i) it is provided in the same or substantially the same form as the written notice or document,

(ii) the tenant has provided an electronic address for receipt of documents, and

(iii) it is sent to that electronic address; or

(g) sending it to the tenant by courier service at an address set out in paragraph (e).

17. Although I agree with the tenant that the *Act* does permit the service of notices on tenants that would be more discreet (by registered mail, or by placing it in her mailbox, e.g.), s. 35.(2)(c) does allow a landlord to place a notice on the tenant's door and there is no requirement outlined here requiring that that notice be placed in an envelope or that the content of the notice be concealed. I find, therefore, that that notice was properly served on the tenant in accordance with the *Act*.
18. Regarding the tenant's complaints about retaliation and harassment, I directed the tenant to section 29 of the *Act*, which states:

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.

19. As the termination notice was issued to the tenant on 29 January 2021, the tenant had until the end of February 2021 to file an application with this Section seeking a declaration that the notice was void and of no effect as it was given for an invalid purpose.
20. On review of the correspondence this Section had received from the tenant, I note that we first received the tenant's application, albeit incomplete, on 29 March 2021, and that she did not pay the filing fee until 13 May 2021. This is well outside the one month time limit the tenant had to make application under this section of the *Act*, and I therefore cannot take into account the tenant's

complaints in making a determination of the validity of the landlord's termination notice.

21. Leaving the tenant's complaints aside, then, as the termination notice was properly served and as it meets all the requirements set out in section 18 and 34 of the *Act*, I find that it is a valid notice.

Decision

22. The landlord's claim for an order for vacant possession of the rented premises succeeds.
23. The tenant shall pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

30 June 2021

Date

