

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0214-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:08 AM on 10 August 2021 via teleconference.
2. The applicant, [REDACTED] hereinafter referred to as “the landlord”, participated in the hearing. The respondent, [REDACTED] hereinafter referred to as “the tenant”, also participated.

Issues before the Tribunal

3. The landlord is seeking the following:
 - A determination of the validity of a termination notice issued to her,
 - An order for a payment of rent in the amount of \$700.00, and
 - An order for a payment of \$20.00 in hearing expenses.

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 decision are sections 7, 10, 18, 20, 21 and 23 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

6. This is the second application this Tribunal has heard concerning this tenancy. As a result of application [REDACTED] heard on 14 December 2020, the landlord was ordered to refund to the tenant the \$350.00 security deposit.

Issue 1: Validity of Termination Notice

Issue 2: Rent - \$700.00

Relevant Submissions

The Landlord's Position

7. The landlord stated that she had entered in a verbal rental agreement with the tenant on 12 October 2020 and the tenancy was set to commence on 01 November 2020. The agreed rent was set at \$700.00 per month and the tenant paid a security deposit of \$350.00 on 12 October 2020.
8. On 28 October 2020, the tenant met the landlord at the rental property and he was to begin moving his possession into the unit on that date. On that day, the landlord spoke to the tenant about the toilet at the rental unit, and she requested that, as much as possible, he refrain from putting toilet tissue in the toilet for fears of clogging. She testified that this was a request that she had made of the previous occupants of the property and there had never been an issue.
9. However, upon making that request, the tenant informed the landlord that he had now decided that he would not be moving in after all.
10. The landlord claimed that this news had "left her stranded" and she immediately went to work to try to find a new occupant for the unit for November 2020. She testified that she had placed advertisements on Kijiji, Buy and Sell, and with MUN Off-Campus Housing, and she had even placed a sign on the lawn of the property. The landlord stated that she had also contacted the previous applicants who had been looking to take possession of this unit for November 2020.
11. Despite these efforts, the landlord stated that she was unable to find a new renter for November 2020 and she suffered a loss of rental income for that month.
12. The landlord argued that as the tenant had not given her a proper, 1-month notice, indicating that he was terminating their agreement, she is entitled to compensation for the loss rental income she had suffered for November 2020: \$700.00.

The Tenant's Position

13. The tenant stated that when he had entered into the verbal rental agreement with the landlord on 12 October 2020, it was implicit in that agreement that he would be provided with a toilet that was in good working order, as required by statutory condition 1, set out in section 10 of the *Residential Tenancies Act, 2018*. He argued that the restrictions the landlord had tried to place on him with respect to the operation of the toilet clearly showed that she was not complying with that statutory condition, and that he therefore had grounds to terminate their agreement.

14. He also argued that, when the landlord informed him, on 28 October 2020, that he was not to put any toilet tissue in the toilet during his tenancy, she was attempting to unilaterally change the terms of their verbal agreement. The tenant pointed out that a landlord is not allowed to change the terms of a rental agreement without the tenant's consent, and that the only way she would be able to put these restrictions in place was if she first terminated the agreement with him and then tried to renegotiate the terms of a new agreement. In that sense, the tenant argued that it was the landlord who broke their contract, not him.
15. The tenant further argued that he was under no obligation to pay rent to the landlord anyhow. He pointed to section 7.(3) of the *Residential Tenancies Act, 2018* which states that where a landlord and a tenant enter into a verbal rental agreement, the landlord shall provide the tenant with a written notice, containing all of the information set out *Rental Agreement Notice Regulations* (<https://www.assembly.nl.ca/Legislation/sr/regulations/rc180120.htm>). He testified that the landlord had not provided him with such a notice, as required.
16. The tenant went on to quote section 7.(4) of the *Residential Tenancies Act, 2018* which states that where a landlord does not provide a tenant with such a written notice, "the tenant's obligation to pay rent is suspended and the landlord shall not require the tenant to pay rent until the landlord complies with subsection (2) or (3)."

Analysis

17. I agree with the landlord that the tenant had not properly terminated this rental agreement and that when he informed her, on 28 October 2020, that he would not be moving in, he had violated the notice requirements set out in the *Residential Tenancies Act, 2018*.
18. Typically, in a month-to-month tenancy, according to section 18 of the *Act*, a tenant is required to provide the landlord with at least 1 month's notice that he is terminating the rental agreement. In some special circumstances, a tenant may give a shorter notice if, for example, the rental unit is found to be unfit for habitation (s. 21) or where the landlord is interfering with the tenant's peaceful enjoyment (s. 23).
19. Where a tenant believes that a landlord is not living up to her statutory obligations, as the tenant argued, he is first required to provide her with a written notice stating that she is in contravention of those obligations and then he must give her a reasonable amount of time to remedy the breach. Where the breach is not remedied within that timeframe, a tenant may terminate the agreement under section 20 of the *Act* (notice where material term of agreement contravened) by issuing the landlord a 1-month termination notice.

20. In any case, regardless of the reasons for terminating a rental agreement, any notice of termination must be in compliance with section 34 of the *Residential Tenancies Act, 2018*, which states:

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.*
21. As the tenant had not given the landlord a notice, as required under section 34, he had not properly terminated their rental agreement and he is therefore considered to have abandoned the rented premises. Where a tenant abandons residential premises, he is liable for any damages caused by that abandonment, including any loss of rental income suffered by the landlord, so long as the landlord mitigated those damages. I accept the landlord's claim that she had advertised the unit as soon as she was informed by the tenant that he would not be moving in, and that, despite those efforts, the unit sat vacant for the month of November 2020.
22. However, despite the fact that the tenant is responsible for the loss of rent the landlord had suffered for November 2020, as he had not properly terminated his agreement, he is right to point out that his obligation to pay rent to the landlord had been suspended, as she had not provided him with a written notice of their verbal rental agreement containing the information set out in the regulations, as required by section 7.(4) of the *Residential Tenancies Act, 2018*.

Decision

23. The verbal termination notice issued to the landlord on 28 October 2020 is not a valid notice.
24. The landlord's claim for a payment of rent does not succeed.

Issue 3: Hearing Expenses

25. The landlord paid a fee of \$20.00 to file this application.
26. Policy with this Section is that where a party receives an award, their hearing expenses shall be awarded also. With respect to the filing fee, though, that fee

will only be awarded as a hearing expense if the total award exceeds the amount of the security deposit. As the landlord's claim for rent has not succeeded, her claim for the filing fee also fails.

17 January 2022

Date

