

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0438-05

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:41 a.m. on November 08, 2021.
2. The applicant, [REDACTED] represented by, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.
4. The landlord submitted a witness affidavit from [REDACTED], hereinafter referred to as the witness.

Preliminary Matters

5. [REDACTED] spouse was present at the start of the hearing, but left prior to the administration of the affirmations. She did not provide testimony.
6. The landlord submitted an affidavit (LL#01), indicating that a Sherriff’s officer served the tenant personally on October 18, 2021, of notification of the hearing. The tenant confirmed this service.

Issues before the Tribunal

7. The landlord is seeking vacant possession of the rental premises and hearing expenses.

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
9. Also relevant and considered in this case is the following section of the *Residential Tenancies Act, 2018*: Section 18, notice of termination of rental agreement.

Issue 1: Vacant Possession of the Rental Premises

Landlord's Position

10. The landlord submitted a rental agreement (LL#02) indicating that they entered into a monthly agreement in November 2018, with the tenant for \$1,250.00 pay own utilities due on the 24th day of each month. There was no security deposit paid. The tenant signed this agreement on November 25, 2018.
11. The landlord provided a termination notice (LL#03) for a Landlord's Notice to Terminate – Standard under section 18 of the Residential Tenancies Act. It is dated for June 03, 2021 with a termination date of September 24, 2021.
12. The tenant is still residing at the premises.
13. The landlord said that the termination notice was served electronically on the day signed: June 03, 2021 to an email address provided to him by the tenant.
14. The landlord was unsure which day of the rental period is the first day and which day is the last, he could only verify that rent is due on the 24th of each month as stated in the rental agreement (LL#02). He did state that the 24th is the first day but was unsure of the question.
15. The landlord provided an affidavit from the witness (LL#04) stating that there was issues around obtaining rent from the tenant and it was always paid late.

Tenant's Position

16. The tenant provided a letter about an earlier termination notice (TT#01). This is a letter dated June 3, 2021 that was sent to him by the landlord about a previous notice of termination signed May 21, 2021 with a termination date of May 30, 2021.
17. This termination was for cause. This termination was not in consideration for this application.
18. This tenant didn't understand why he was being terminated and he had stated he had paid rent last December up to September 2021 and because of this, he believed he could not be evicted until at least 3 months after the date the rent is paid for.
19. The tenant said that he had an arrangement with the witness, that his rent would be due on the 1st of every month. He also said, because the witness is older, he had paid for a number of months at a time, so that the witness would not have to collect rent from his door every month.

Analysis

20. It was explained to the tenant that with a notice to terminate standard there doesn't have to be a reason for the termination of the agreement.

21. In Section 18 of the *Residential Tenancies Act; 2018*, it says:

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

.....

(b) not less than 3 months before the end of a rental period where the residential premises is rented from month to month; and

.....

22. As indicated in paragraph 13, the landlord was unable to determine the rental period, he was asked repeatedly is the 24th the first or the last day of the rental period? He was asked if the rental period began on the 24th and ended on the 23rd of each month. He was also asked if the rental period began on the 25th and ended on the 24th day of the month. He repeatedly stated that rent was due on the 24th.
23. As the landlord was becoming increasingly uncooperative and did state that the 24th is the first day of the rental period, however, he seemed unsure of the question. In light of the uncertainty of his response, I'm left to determine the rental period based on what would be considered the norm. In typical circumstances, rent is due on the first of each month and the rental period is to the last day of each month. This leaves me with rent is due on the 24th of each month so the 24th is the first day of the rental period and the 23rd is the last day of the rental period.
24. According to Section 18, seen above, a termination notice is to be for not less than 3 months before the **end** of a rental period where the residential premises is rented from month to month. Therefore the **end** of the rental period in this situation would be the 23rd day of the month.
25. The termination notice is dated for the **first** day of the rental period and is therefore not a valid notice.

Decision

26. The landlord's request for vacant possession fails, the termination notice dated for a termination date of September 24, 2021 is not valid.

Hearing Expenses

27. The landlord submitted hearing expenses (█ #05) as follows:
- Application fee.....\$20.00
 - Photocopying and stationary.....\$81.11
 - 25 hours work for application @ \$90.00\$2,250.00
 - **Total.....\$2,351.11**

28. As the landlord's claim is unsuccessful the hearing expenses are not the responsibility of the tenant.

Summary of Decision

29. The termination notice signed on June 3, 2021 with a termination date of September 24, 2021 is not a valid notice.

November 17, 2021
Date

