

## Residential Tenancies Tribunal

Application [REDACTED]  
[REDACTED]

Decision 21-0474-05

Jacqueline Williams  
Adjudicator

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### Introduction

1. Hearing was called at 9:03 a.m. on 14-February-2022 via teleconference.
2. The applicant, [REDACTED] hereinafter referred to as “the tenant,” attended by teleconference.
3. The respondent, [REDACTED] represented by [REDACTED] hereinafter referred to as “the landlord,” also attended by teleconference.

### Preliminary Matters

4. The tenant said she served the landlord notice of hearing via email on 24-November-2021; the landlord confirmed service. The landlord said she served the tenant notice of hearing via prepaid registered mail on 04-December-2021 (LL#01); the tenant confirmed service.

### Issues before the Tribunal

5. The tenant is seeking the determination of the validity of a termination notice issued to her on 08-October-2021.
6. The landlord is seeking an order for vacant possession of the rented 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 34: Requirements for notices.

**Issue 1: Vacant Possession of the Rental Premises**  
**Issue 2: Determination of Validity of Termination Notice**

The Landlord's Position

9. The landlord submitted a written rental agreement (LL#02) with the tenant, dated for February 11, 2015. The current rent is \$263.00 a month, the rental period is from the 1<sup>st</sup> day of the month to the last. Rent is due the 1<sup>st</sup> day of the month. The landlord stated that the rental agreement is for a three year term. She said that every third year the tenant signs a paper agreeing to extend for another 3 years. The terms run from 01-March-2015 – 28-February-2018 / 01-March-2018 – 28-February-2021 & 01-March-2021 – 28-February-2024.
10. The landlord submitted a copy of the termination notice (LL#03) advising the tenant to deliver possession of the premises in accordance with Section 18 of the *Residential Tenancies Act*. This notice was dated for 08-October-2021 with a termination date of 01-February-2022.
11. The termination letter was sent by registered mail with Canada Post (LL#04). The date the letter was processed was 08-October-2021 and delivered to the tenant on 26-October-2021. The landlord confirmed she also posted the notice on the tenant's door in early October.

The Tenant's Position

12. The tenant disputes the term of the rental agreement. She said that she only signed one rental agreement on 11-February-2015, she provided this form (TT#01), and she said that she is in a monthly rental agreement.
13. The tenant acknowledged that she received the notice as stated. She doesn't understand why she is being evicted, she is trying to apply for another place.

**Analysis**

14. The landlord and tenant are disputing the length of the term of the rental agreement. In paragraph 9 the landlord states that they are in a 3 year term. In paragraph 12, the tenant states that she only signed one rental agreement and it was for a monthly term.
15. The landlord and tenant both submitted the same rental agreement (LL#02 & TT#01). The rental agreement determines the term in paragraph 3 of the agreement it states:

“One month from the first day of February 2015 to the last day of February, and, thereafter from month to month.”

16. In the rental agreement goes on to say in Paragraph 15 (a):

“Where the tenant wishes to renew this lease they must signify this intention at least 120 days prior to the expiration established in Clause 3(b).”

Clause 3(b) doesn't exist in this agreement, there is a space provided, however it is empty.

17. It is reasonable, to assume that the practice, with this landlord, is to renew this contract on a 3 year rotation. This renewal reflects the terms that the landlord is describing. It should be noted; the maximum term recognized by this board is a one year term.
18. The tenant has pointed out that she believes that she is in a monthly agreement, and her belief is supported by the rental agreement submitted by both parties. I therefore accept the tenant's position that she is in a monthly term.
19. 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.*

20. Section 18 of the *Act* allows a landlord to terminate a rental agreement with 3 months' notice to the tenant, without having to provide reasons to either the tenant or this Board.
21. However, the landlord's notice does not meet the timeframe requirements set out in this section of the *Act*.
22. Section 18. 2(b) states that a landlord's notice shall "state the date, which shall be the last day of a rental period, on which the rental agreement terminates and ... the date by which the tenant is required to vacate the residential premises". As the rental period in this tenancy is running from the first day of the month to the last day of the month, (as supported by the rental agreement and testimony of both parties) the termination date set out in the notice has to fall on the last day of that rental period. If the landlord is

looking to have the tenant vacate in February, the termination date has to be listed as 28-February-2022 or if she wanted the tenant to leave in January then the date would be 31-January-2022. The date of 01-February-2022 is the first day of the rental period, as described by the landlord in paragraph 9.

23. The landlord's claim does not succeed.

### **Decision**

24. The termination notice issued to the tenant on 08-October-2021 with a termination date of 01-February-2022, is not a valid notice.
25. The landlord's claim for an order for vacant possession of the rented premises fails.

### **Issue 2: Hearing Expenses**

26. The tenant paid a fee of \$20.00 (TT#03) to file her application. As her claim has succeeded, the landlord shall pay that hearing expense.

### **Summary of Decision**

27. The termination notice issued to the tenant on 08-October-2021 with a termination date of 01-February-2022, is not a valid notice.
28. The landlord's claim for an order for vacant possession of the rented premises does not succeed.
29. The landlord shall reimburse the tenant \$20.00 for the filing fee.

February 17, 2022

Date

