

Residential Tenancies Tribunal

Decision 19-272-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:30 am on 02 May 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as “the tenants”, did not participate in the hearing and I was unable to reach them by telephone from the hearing room.
3. The respondent, [REDACTED], hereinafter referred to as “the landlord”, participated in the hearing. He was represented by [REDACTED].

Issues before the Tribunal

4. The tenants are seeking a determination of the validity of a termination notice issued to them on 04 April 2019.

Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
6. Also relevant and considered in this case are sections 2, 3 and 19 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

7. The tenants/applicants were not present or represented at the hearing and I was unable to reach them by telephone from the hearing room. At the request of the landlord and his representative, I proceeded with the hearing in the tenants’ absence.

Issue 1: Validity of Termination Notice

Relevant Submissions

8. The landlord stated that he had built the rental unit for the tenants in February 2015 and he testified that he had entered into a rent-to-own agreement with them at that time. The rent was set at \$680.00, due every second Friday. The tenants were also responsible for paying the property taxes and home insurance.
9. At the hearing, the landlord initially stated that the rent payments made to him were going toward the purchase price of the home. His representative stated that once the payments equalled the purchase price, the property would be transferred to the tenants.
10. The landlord later corrected his testimony and stated that the rent payments were not, in fact, going towards the purchase price of the home. Rather, the payments made to the landlord were for rent alone, i.e., solely for use and occupation, and the tenants were supposed to purchase the property when they qualified for a mortgage. He stated that he offered to sell the house to the tenants for \$310,000.00 and that price did not decrease as they paid the rent. He stated that he offered to sell the unit to the tenants in 2016, 2017, 2018 and again in January and April 2019. He testified that they did not qualify for a mortgage and declined each of these offers.
11. The landlord's representative stated that the tenants had no equity stake in the home and she claimed that when the tenants' rent payments had reached the purchase price, \$310,000.00, the house would be gifted to them.
12. At the hearing, the landlord submitted a copy of his rent records showing the payments he had received from the tenants since August 2018 (█ #3). According to these records, the tenants missed their 2 rent payments in November 2018. The landlord testified that it was agreed that these 2 missed payments would be added to the price of the home when the tenants eventually purchased it. The records also show that the tenants have missed their payments for 15 March, 29 March, 12 April and 26 April 2019.
13. As a result of the missed payments in March 2019, the landlord issued the tenants a termination notice and a copy of that notice was submitted with the tenants' application (█ #1). This notice was issued under section 19 of the *Residential Tenancies Act, 2018* (notice where failure to pay rent) and it had an effective termination date of 17 April 2019. Also submitted with the application was an affidavit from a process server (█ #2) stating that this notice was personally delivered to the tenants on 04 April 2019.
14. Through this application the tenants are seeking a determination of the validity of that notice.

Analysis

15. There are 2 issues that need addressing:
- a) Is the rent-to-own arrangement described at the hearing properly a landlord/tenant relationship and does this Tribunal have jurisdiction in this matter?, and
 - b) If so, is the termination notice issued to the tenants a valid notice?

Rent-to-Own Relationship

16. Section 3 of the *Residential Tenancies Act, 2018* states:

Application of Act

3. (1) Notwithstanding another Act or agreement, declaration, waiver or statement to the contrary, this Act applies where the relationship of landlord and tenant exists in respect of residential premises.

(2) Notwithstanding another Act or agreement, declaration, waiver or statement to the contrary, this Act applies to residential premises, residential complexes and rental agreements, whether made before or after this Act comes into force.

(3) The relationship of landlord and tenant shall be considered to exist in respect of residential premises where the tenant

(a) uses or occupies residential premises and

(i) has paid or agreed to pay rent to the landlord, or

(ii) a governmental department or agency has paid or has agreed to pay rent to the landlord;

(b) makes an agreement with the landlord by which the tenant is granted the right to use or occupy residential premises in consideration of the payment of or the promise to pay rent; or

(c) has used or occupied residential premises and

(i) has paid or agreed to pay rent to the landlord, or

(ii) a governmental department or agency has paid or agreed to pay rent to the landlord.

17. “Rent” is defined in the *Act* as “money or other value paid, or required to be paid under a rental agreement, by a tenant to a landlord before or during the use or occupancy of a residential premises for the use or occupation of the residential premises” (cf. s. 2.(g)).
18. In rent-to-own relationships some, or all, of the money paid by the tenant to the landlord goes towards the purchase price of the home. That money is not considered to be rent as it is applied towards the purchase price and is not merely for “use or occupancy”. Each payment increases the tenant’s ownership interest in the home. These sorts of relationships are better described as one of seller and purchaser, not landlord and tenant, and, as such, this Tribunal would not have jurisdiction as the *Residential Tenancies Act, 2018* would not apply.
19. However, although the landlord and his representative described the agreement the landlord had with the tenants as a “rent-to-own agreement”, the landlord also stated that the money he received from the tenants was not applied towards the purchase price of the home, correcting earlier testimony he had given. (That corrected testimony seemed to be contradicted by his representative, however, in that she insisted that the tenants would gain ownership and title to the home—by transfer or gift—when the total rent payments equaled \$310,000.00.) He additionally stated that he had offered the house to the tenants on 5 separate occasions at the same purchase price of \$310,000.00, but these offers were refused as the tenants were unable to secure a mortgage.
20. Although the landlord described his agreement as “rent-to-own” I find that the description of the agreement he provided at the hearing is better characterized as a residential tenancies rental agreement with an option to purchase. In these sorts of relationships, a landlord-tenant relationship is in place, as defined in the *Act*, and the parties have a separate, incidental agreement that they have the option to purchase the property. Only when that option is exercised does the relationship change from that of landlord/tenant to that of seller/purchaser. As the tenants never did agree to purchase the house as they could not secure a mortgage, I find that the option was not triggered and their relationship remained one of landlord and tenant.
21. As there was no rent-to-own agreement and as the option to purchase was not triggered, the relationship between the landlord and the tenants did not change to one of seller and purchaser. As such, this Tribunal does have jurisdiction in this matter.

Validity of Termination Notice

22. Section 19 of the *Residential Tenancies Act, 2018* states:

Notice where failure to pay rent

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

(a) where the residential premises is rented from week to week and the amount of rent payable by a tenant is overdue for 3 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 3 days after the notice is served on the tenant; and

(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.

(2) Notwithstanding subsection (1), where the tenant pays the full amount of the overdue rent, including a fee under section 15, before the date specified in the notice under paragraph (1)(a) or (b), the rental agreement is not terminated and the tenant is not required to vacate the residential premises.

(3) Subsection (2) does not apply where notice is given to a tenant under paragraph (1)(a) or (b) more than twice in a 12 month period.

(4) In addition to the requirements under section 34, a notice under this section shall

(a) be signed by the landlord;

(b) state the date on which the rental agreement terminates and the tenant is required to vacate the residential premises; and

(c) be served in accordance with section 35.

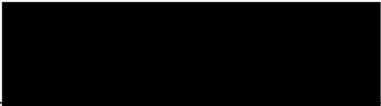
23. On 04 April 2019, the day the termination notice was issued, the tenants had been in arrears since 16 March 2019, a period of 19 days. After the notice was issued the tenants made no rent payments to the landlord and they remained in arrears on 17 April 2019, the effective termination date set out in the notice.
24. As the notice meets the timeframe requirements set out in this section of the *Act* and as the notice was properly served, it is a valid notice.

Summary of Decision

25. The termination notice issued to the tenants on 04 April 2019 is a valid notice.

08 May 2019

Date



John R. Cook
Residential Tenancies Tribunal