

Residential Tenancies Tribunal

Decision 19-274-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 11:05 am on 02 May 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant”, participated in the hearing. The respondent, [REDACTED], hereinafter referred to as “the landlord”, also participated.

Issues before the Tribunal

3. The tenant is seeking a determination of the validity of a termination notice issued to her on 16 April 2019.
4. The landlord is seeking an order for vacant possession of the rented premises and an order for compensation for damages in the amount of \$800.00.

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 is section 22 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

7. The tenant was only served with the landlord’s application on 27 April 2019 and I informed the tenant at the hearing that this did not meet the 10-day notice

requirement. The tenant waived her right to proper notice and she requested that the hearing proceed as scheduled.

Issue 1: Validity of Termination Notice

Issue 2: Vacant Possession of Rented Premises

Relevant Submissions

The Landlord's Position

8. The landlord and tenant entered into a verbal rental agreement in December 2016. The agreed rent is set at \$825.00, due on the 20th day of each month.
9. On 10 April 2019 the landlord issued the tenant a notice (█ #2) to carry out the following repairs:
 - Closet door latches
 - Basement area unaccessible [*sic.*], garbage bags, fire hazard
 - Ground areas with tenant belongings is pool liner
 - Washer to be checked for operation
 - Knobs on furniture missing

The repairs were to be completed by 14 April 2018.

10. The landlord testified that he had visited the rental unit on 15 April 2019 and carried out an inspection. He claimed that all the repairs had been completed except that the tenant had not had the washing machine inspected. He stated that the tenant had informed him that as she had not broken the washer it was not her problem.
11. The landlord complained that the tenant had her father inspect the washer when she should have hired a professional. He stated that he was informed by the tenant that her father had replaced a belt in the washer but it is still not operational as the motor is seized.
12. The landlord stated that as the tenant had not had the washer inspected, as per his notice, he issued her a termination notice on 16 April 2019, the day after the inspection. A copy of that notice was submitted with the tenant's application (█ #1). That notice was issued under section 22 of the *Residential Tenancies Act, 2018* (notice where tenant's obligation not met) and it had an effective termination date of 21 April 2019.
13. The landlord stated that the tenant has not vacated as required and he is seeking an order for vacant possession of the rented premises.

The Tenant's Position

14. The tenant stated that she had complied with the landlord's notice to carry out the noted repairs, except that she had not had the washer inspected.
15. The tenant testified that the washer just stopped working, about a month or so ago, through no fault of her own. She testified that she had not misused the washer nor had she deliberately damaged it. On the landlord's instruction, she had her father inspect the washer and he noted that a belt was broken. However, she denied that her father had changed that belt or carried out any other work on that appliance. The tenant argued that as she had not damaged the washer she cannot be held responsible for repairing it.
16. The tenant testified that she had e-mailed the landlord a notice on 15 April 2019 requiring that he carry out repairs on the washer.

Analysis

17. Statutory condition 2, set out in section 10.(1) of the *Residential Tenancies Act, 2018* states:

Statutory conditions

10. (1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:

...

2. Obligation of the Tenant - The tenant shall keep the residential premises clean, and shall repair damage caused by a wilful or negligent act of the tenant or of a person whom the tenant permits on the residential premises.

and section 22 of this *Act* states:

Notice where tenant's obligation not met

22. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes statutory condition 2 set out in subsection 10(1), the landlord may give the tenant notice requiring the tenant to comply with the condition.

(2) Where a tenant contravenes statutory condition 2 set out in subsection 10(1) within 3 days after the notice under subsection (1) has been served or within a reasonable time, the landlord may give the tenant notice that the rental agreement is terminated and the tenant is required to

vacate the residential premises on a specified date not less than 5 days after the notice has been served.

(3) 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.

18. After reviewing the evidence submitted at the hearing, I find that the termination notice issued to the tenant on 16 April 2019 is not valid. I've come to this conclusion based on the following 2 reasons.
19. First, it was the tenant's testimony that she used the washer in a normal way and that it merely broke down on its own. No evidence was presented by the landlord to establish, on the balance of probabilities, that this damage was the result of "a wilful or negligent act of the tenant" and I therefore find that the tenant was not in contravention of statutory condition 2, quoted above.
20. Second, the termination notice issued to the tenant does not meet the timeframe requirements set out in s. 22.(2) of the *Act*. A termination notice issued under this section of the *Act* must specify a termination date that is "not less than 5 days after the notice has been served". That means that there have to be 5 clear days between the date the notice is served and the date the tenant is required to vacate. On 16 April 2019, the earliest termination date the landlord could specify in such a notice would be 22 April 2019.

Decision

21. The termination notice issued to the tenant on 16 April 2019 is not a valid notice.
22. The landlord's claim for an order for vacant possession of the rented premises does not succeed.

Issue 3: Compensation for damages - \$800.00

Relevant submissions

23. The landlord is seeking an order for a payment of \$800.00 for the costs of either repairing or replacing the washer. No evidence was submitted at the hearing to establish the repair or replacement costs he is seeking here.

Analysis

24. I determined in the previous section that the landlord had failed to establish that the tenant had damaged the washer through any deliberate or negligent act. As such, his claim for compensation for the costs of replacing or repairing the washer does not succeed.

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25. The landlord's claim for compensation for damages does not succeed.

Summary of Decision

26. The termination notice issued to the tenant on 16 April 2019 is not a valid notice.
27. The landlord's claim for an order for vacant possession of the rented premises does not succeed.
28. The landlord's claim for compensation for damages does not succeed.

09 May 2019

Date


John R. Cook
Residential Tenancies Tribunal