

Residential Tenancies Tribunal

Decision 19-249-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:05 pm on 09 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], was represented at the hearing by [REDACTED], hereinafter referred to as “the landlord”.

Issues before the Tribunal

3. The tenant is seeking a determination of the validity of a termination notice issued to him on 25 April 2019.

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 case is sections 18, 24 and 29 of the *Residential Tenancies Act, 2018*.

Issue 1: Validity of Termination Notice

Relevant Submissions

The Tenant’s Position

6. The tenant stated that he had entered into a 1-year, fixed-term rental agreement with the landlord on 15 June 2018 and the landlord submitted a copy of that

executed agreement at the hearing (█ #1). The agreed rent is set at \$865.00 and the tenant paid a security deposit of \$432.00.

7. With his application, the tenant submitted 2 termination notices which were issued to him in April 2019. The first notice (█ #1) was given to him on 18 April 2019 and was issued under section 24 of the *Residential Tenancies Act, 2018* (notice where tenant contravenes peaceful enjoyment and reasonable privacy). That notice had an effective termination date of 24 April 2019.
8. After receiving that notice the tenant filed an application with this Section seeking a determination of its validity. He served the landlord with a copy of his application on 23 April 2019 but on 25 April 2019 the tenant was given a second termination notice (█ #2). This second notice was issued under section 18 of the *Act* and it had an effective termination date of 31 July 2019. The tenant stated that when he was issued the notice he was informed that as this second notice had a later termination date than the first it therefore superseded that notice. The tenant subsequently amended his application and he is seeking a determination of that notice as well.
9. The tenant contended that these notices were given to him in retaliation for making complaints to the landlord about a theft which had occurred in the complex's laundry facility. He stated that he had made those complaints to the landlord's superintendent, █, on 17 April 2019 and again to █, a customer service coordinator, on 18 April 2019.
10. The tenant contended that those notices were invalid as they were given for an invalid purpose as contemplated under section 29 of the *Act*, which states:

Termination for invalid purpose

29. (1) A landlord shall not

(a) terminate or give notice to terminate a rental agreement; or

(b) directly or indirectly coerce, threaten, intimidate or harass a tenant or a member of a tenant's family,

in retaliation for, or for the purpose of deterring the tenant from, making or intervening in a complaint or application in relation to a residential premises.

(2) Where a tenant who is served with a notice of termination of a rental agreement believes that the landlord has contravened subsection (1), he or she may, not later than one month after receiving the notice, apply to the director under section 42 for an order declaring that the rental agreement is not terminated.

11. The tenant claimed that it is a well-known fact at the complex that frequent thefts occurred in the shared laundry facility. He stated that when he first lived at the

complex he had approximately \$300.00 worth of clothing stolen from him on one occasion. On 17 April 2019, he stated that 2 dress shirts were stolen from him and when he saw [REDACTED] in the hallway he approached him to discuss the matter.

12. The tenant stated the [REDACTED] did not seem to care about this issue and the tenant said to him that it was useless talking to him about the matter. In reference to a fire which had occurred at the unit 2 weeks previous, the tenant stated that [REDACTED] responded by saying that he was “the useless one” as he did not extinguish that fire when he had the opportunity. The tenant stated that this comment made him very angry and he walked right up to [REDACTED] and challenged him on the comments he had just made.
13. The tenant stated that during this confrontation, [REDACTED] alleged that the tenant had touched him and he informed the tenant at that time that he “would call it in”. The tenant stated he did not know what [REDACTED] meant by that remark.
14. Still concerned about the theft and looking to have his concerns taken seriously, the tenant visited the landlord’s offices on the following morning and he had a meeting with [REDACTED], for about half an hour, about the issue of these thefts and about the possibility of having video cameras installed in the laundry room. He testified that this was a polite meeting and he thanked [REDACTED] when it ended.
15. When the tenant returned to the complex he stated that there was an RNC police officer there who “wrote him up” on assault charges relating to the confrontation with [REDACTED] on the previous day. The tenant stated that he has a pending court date relating to that charge and he also has an appointment with a lawyer to discuss the matter. The tenant denied that he had assaulted [REDACTED] or that he had even touched him and he figured that once his lawyer and the Crown Prosecutor examine the evidence, the charges will be dropped.
16. On that same morning, the tenant stated that [REDACTED] visited the complex and she issued him the first termination notice ([REDACTED] #1). The tenant argued that that notice, as well as the second one which was issued to him on 25 April 2019, were invalid, under s. 29 of the *Act*, as they were given to him because he had been complaining to [REDACTED] and [REDACTED] about the laundry room theft which took place on 17 April 2019.

The Landlord’s Position

17. The landlord stated that the tenant is a very aggressive and intimidating person and she claimed that there have been several confrontations between him and her superintendent, [REDACTED]. She stated that on one occasion the tenant became angry with him when he would not supervise the contractors who were installing a window in his apartment. And on the night of the fire, 07 April 2019,

the landlord also stated that the tenant had again aggressively confronted [REDACTED] because he had not answered his door.

18. With respect to the alleged assault on 17 April 2019, the landlord reported that there is a video recording of that incident. Because of the way in which the tenant and [REDACTED] were standing, the camera did not capture the assault, but the landlord stated that she could nevertheless see that the tenant is aggressive and acting very angrily towards [REDACTED].
19. The landlord also testified that the tenant had been acting in an aggressive and intimidating manner towards her and [REDACTED]. She stated that when she was served with the tenant's application he aggressively demanded that she sign receipt of the application and she stated that when [REDACTED] was served with the amended claim he was also acting aggressively and demanded that she show up at the hearing. The landlord stated that she witnessed that interaction and she was fearful that it would turn violent.
20. She also stated that she was at the office on 18 April 2019 when the tenant met with [REDACTED] and she also reported that the tenant was loud and aggressive on that date. She testified that [REDACTED] is fearful of the tenant and that is the reason why she did not attend this hearing.
21. The landlord claimed that because of the tenant's aggressive attitude no one at her company is comfortable doing business with him and after she had received report of the assault on 17 April 2018 and as a result of the tenant's interaction with [REDACTED] on the following day, it was decided that she would terminate his tenancy on the grounds of interference with peaceful enjoyment.
22. The landlord stated that she decided to revoke that first, 5-day notice, issued on 18 April 2019, and serve instead a 3-month notice, not because the tenant had filed an application with Residential Tenancies, but rather because she figured that she would not be able to produce enough evidence at a hearing to establish that the tenant had been interfering with [REDACTED] peaceful enjoyment. She pointed out that there is no audio on the video recording and that recording also does not show that the tenant had actually touched [REDACTED].
23. The landlord stated that because of the tenant's attitude towards her and her staff, she no longer wants to do business with him anymore. She argued that this Tribunal ought to determine that the 3-month notice is a valid notice and she should not be forced into continuing her relationship with the tenant.

Analysis

24. Landlords do have a right to terminate a rental agreement with a tenant without having to provide reasons to the tenant or this Tribunal and the only requirement that must be met is that proper notice be given to the tenant. Those notice requirements are spelled out in section 18 of the *Residential Tenancies Act, 2018*, and the relevant subsections 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*

...

(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.

25. Landlords have a right to determine, on their own, who they want, and don't want, as a tenant. Sometimes a landlord would agree to rent to a tenant and only later realize, after some months or even years, that the tenant is not a good fit, for whatever subjective reasons, and they no longer want to share the same roof with them or have to deal with them on a day-to-day basis. Section 18 allows a landlord, in these circumstances, to terminate the rental agreement even if the tenant has not violated any provision of the lease agreement or the *Act*.
26. The only restriction on the landlord's right to determine who they decide to have as a tenant is the retaliatory provision outlined in s. 29 and quoted in paragraph 10, above.
27. In determining whether a landlord has issued a termination notice in retaliation for complaining or making an application it has to be established, on the balance of probabilities, that there is a causal connection between the complaint made by the tenant and the issuance of the termination notice.
28. Although I agree with the tenant that he had complained to [REDACTED] and to [REDACTED] about the theft of his 2 shirts and although the termination

notice was issued to him shortly after he had made those complaints, I was nevertheless not wholly persuaded that the notice was issued because he had made the complaint.

29. Although a landlord does not have to provide reasons to the tenant or this Board as to why she is issuing a termination notice under section 18 of the *Act*, the landlord nevertheless did provide a compelling rationale at the hearing as to why it was issued and the fact that the first notice was issued under s. 24 underlines that reasoning. The landlord was of the view that the tenant was aggressive and threatening in the way in which he spoke to [REDACTED] and [REDACTED] and assault charges were brought against the tenant.
30. Whether or not the tenant had actually physically assaulted [REDACTED], it seems to me that that incident is what compelled the landlord to issue the notice. The tenant acknowledged that he was angry with [REDACTED] on that day and that he had lost his temper. The landlord also reported that this was not the first run-in that the tenant had had with [REDACTED] and she also claimed that he had been aggressive with her and [REDACTED].
31. I conclude that that it was not because the tenant had been making these complaints on 17 April and 18 April 2019 that the landlord had issued the notices. Rather, it seems that the notices were issued because of the manner in which the tenant had been complaining. As such, I find that the notice issued on 25 April 2019 was not issued in retaliation. And as that notice meets the requirements set out in section 18 of the *Act*, it is a valid notice.

Decision

32. The termination notice issued to the tenant on 25 April 2019, with an effective termination date of 31 July 2019, is a valid notice.

05 June 2019

Date

[REDACTED]

John R. Cook
Residential Tenancies Tribunal