

Residential Tenancies Tribunal

Decision 20-0466-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:36 pm on 03 December 2020 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant”, participated in the hearing. She was represented by [REDACTED] (“[REDACTED]”).
3. The respondent, [REDACTED], was represented at the hearing by [REDACTED], hereinafter referred to as “the landlord”.

Issues before the Tribunal

4. The tenant is seeking a determination of the validity of a termination notice issued to her on 29 July 2020.
5. The landlord is seeking an order for vacant possession of the rented premises and an order for a payment of rent in the amount of \$476.00.

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
7. Also relevant and considered in this case are sections 18 and 35 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

8. The landlord amended her application and stated that she was now seeking an order for a payment of rent in the amount of \$483.00.

Issue 1: Validity of Termination Notice

Issue 2: Vacant Possession of the Rented Premises

Relevant Submissions

The Landlords' Position

9. The tenant moved into the rental unit on 17 November 1989. The current monthly rent is set at \$983.00.
10. With her application, the landlord submitted a copy of a termination notice as well as an affidavit stating that that notice was issued to the tenant on 29 July 2020. The submitted termination notice was issued under section 18 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 31 October 2020.
11. The landlord stated that the tenant has not vacated the rented premises as required and she is seeking an order for vacant possession of the rented premises.

The Tenant's Position

12. The tenant acknowledged that she had received the termination notice on 29 July 2020.
13. She stated that she had moved to ██████ in 2017 and shortly afterwards it was discovered that she had cancer ██████. She is scheduled for cancer treatment in ██████ in March 2021. The tenant stated that she never did have intentions to be away from Newfoundland for such an extended period, but she argued that the cancer diagnosis was unexpected and she had no choice but to seek treatment.
14. The tenant pointed out that she had been living at the rented premises for over 30 years and she considers it her home. She stated that all of her possessions, including her clothes, are still in that unit.
15. The tenant's son, and representative, ██████, argued that the reason the tenant has not been able to come home sooner was because of the travel restrictions imposed in Canada as a result of the COVID-19 pandemic.
16. He pointed out that the tenant is a 70 year old woman and if she is evicted from her apartment, she will have no where to go when she does return from ██████.

Analysis

17. 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*

...

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

...

(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

18. The relevant subsections of section 35 of this Act state:

Service of documents

35. (2) *A notice or other document under this Act other than an application under section 42 shall be served by a landlord on a tenant by*

...

(c) posting it in a conspicuous place on the tenant's residential premises;

19. Section 18 of the Act allows a landlord to terminate a rental agreement, on 3 month's notice, without having to provide reasons to either the tenant or this Board.

20. As the notice meets all the requirements set out in section 18 of the Act and as it was properly served in accordance with section 35.(2)(c), it is a valid notice.

Decision

21. The termination notice issued to the tenant on 29 July 2020 is a valid notice.

22. The landlord's claim for an order for vacant possession of the rented premises succeeds.
23. The tenant shall pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

Issue 2: Rent - \$483.00

Relevant Submissions

The Landlord's Position

24. The landlord submitted rent records with her application showing the payments she had received from the tenant since September 2020. According to these records, the tenant had a balance of \$993.00 on 01 September 2020 and during that month she had received 3 payments of \$500.00 each, leaving the tenant with a balance of \$507.00cr.
25. In October 2020, after the rent of \$983.00 had been charged, the tenant made a further \$500.00 payment leaving a balance of \$24.00cr. In November 2020, the landlord received 2 payments totalling \$1495.00 leaving her with a credit of \$500.00cr.
26. On 01 November 2020, rent was once again charged in the amount of \$983.00 leaving a balance of \$483.00 and the landlord has received no further payments from the tenant. She is seeking an order for a payment of rent in the amount of \$483.00.

The Tenant's Position

27. The tenant did not dispute the landlord's records of the payments that she had made over the last 4 months. She testified that she shared the rent with her son, ■■■, and she claimed that she had been paying her share of \$500.00 each month.
28. ■■■ acknowledged that he was sharing the rent and he also acknowledged that he had not yet paid his share for the month of December 2020. He pointed out that he had a heart attack in September 2020 and that he is now unemployed and is currently receiving worker's compensation benefits. Nevertheless, he stated that he would pay the outstanding balance after the hearing concluded.

Analysis

29. There was no dispute about the landlord's records of the payments received from the tenant and it was agreed by both sides that the tenant owes \$483.00 for December 2020.

30. However, as the landlord has been granted an order for vacant possession of the rented premises, I find that she is entitled to a payment of rent to the date of the hearing and a per diem thereafter. I calculate that the tenant actually has a rent credit of \$403.31cr up to 03 December 2020, the date of the hearing (\$983.00 per month x 12 months = \$11,796.00 per year ÷ 366 days = \$32.23 per day x 3 days = \$96.69 less the rent credit of \$500.00cr the tenant had at the end of November 2020).

Decision

31. The tenant has a rent credit of \$403.31cr.
32. The tenant shall pay a daily rate of rent in the amount of \$32.23, beginning 04 December 2020, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 3: Hearing Expenses

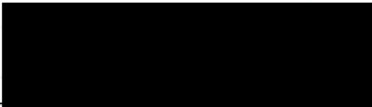
33. The landlord submitted a receipt with her application showing that she had paid a fee of \$20.00 to file this application. As the landlord's claim has been successful, that hearing expense shall be deducted from the tenant's rent credit, reducing it to \$383.31cr.

Summary of Decision

34. The tenant has a rent credit of \$383.31cr.
35. The landlord is entitled to the following:
- A payment of a daily rate of rent in the amount of \$32.23, beginning 04 December 2020 and continuing to the date the landlord obtains possession of the rental unit,
 - An order for vacant possession of the rented premises,
 - The tenant shall also pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

09 December 2020

Date


John R. Cook
Residential Tenancies Tribunal