

Residential Tenancies Tribunal

Application 2024-0810-NL & 2024-0977-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 31-October-2024 at 9:05 am.
2. The applicants to the initial claim, [REDACTED] and [REDACTED], attended via teleconference.
3. The respondent to the initial claim and applicant to the counterclaim, [REDACTED] was represented at the hearing by her counsel, [REDACTED], and both of them also attended via teleconference.
4. [REDACTED], of [REDACTED], was called by the applicants as a witness.

Preliminary Matters

5. Both parties acknowledged that they received notice of the other party's application at least ten days prior to the date of the hearing.
6. Counsel for the respondent raised the issue of jurisdiction. He submitted that it was their position that the respondent does not constitute the landlord in this case, and that this tribunal therefore does not have jurisdiction to hear either claim. The counterclaim was filed as an alternative to this position. He noted that the rental agreement is between [REDACTED] ([REDACTED]) and the applicants. [REDACTED] is defined in the agreement as being the landlord. He also read a text message from the applicants to the respondent, wherein they tell the respondent to communicate through [REDACTED] as [REDACTED] is their landlord.
7. I asked the applicants for their position on the issue and why they commenced this action against the respondent rather than [REDACTED]. They made submissions to the effect that their issues were directly caused by the respondent, not [REDACTED], and that she is the party which should be held responsible. The powers provided to the director under s. 47(1) of the Act generally require a finding that a party has breached the Act or the rental agreement. The applicants allege that the respondent, and not [REDACTED], committed one or more breaches, and is therefore the appropriate party to name.

8. It should be noted that one of the applicants is an employee of [REDACTED].
9. S. 2(c) of the *Residential Tenancies Act*, 2018 (the *Act*) states that “landlord” includes:
 - (i) an owner of a residential premises,
 - (ii) an agent or another person who, on behalf of an owner,
 - (A) permits the use or occupation of a residential premises under a rental agreement, or
 - (B) exercises powers and performs duties under this Act or the rental agreement,
 - (iii) the heirs, assigns and personal representatives of a person referred to in subparagraph (i), and
 - (iv) a person, other than a tenant using or occupying a residential premises, who
 - (A) is entitled to use or occupy the residential premises, and
 - (B) exercises any of the rights of a person referred to in subparagraph (i) or (ii) under this Act or a rental agreement;
10. In interpreting this provision and being mindful of the context of the statute as a whole, I take the words “includes” in s. 2(c) and the conjunction “and” at the end of 2(c)(iii) to mean that there can be more than one landlord in a given a situation. Therefore, the question is whether the respondent qualifies as a landlord in regard to the tenants, and not whether another party might also constitute a landlord.
11. The respondent is the owner of the residential premises. She is the ultimate recipient of some amount of rent from the tenants. I therefore found that the respondent is a landlord under s. 2(c) of the *Act*, and there is a landlord tenant relationship under s. 3 of the *Act*, notwithstanding that another party has been designated “the landlord” in the rental agreement.
12. Hereinafter, the applicants are referred to as the tenants and the respondent is referred to as the landlord.

Issues before the Tribunal

13. Should the tenants’ claim for a refund of rent and compensation for inconvenience succeed?
14. Is the termination notice dated 12-August-2024 valid?
15. Should the landlord’s claim for unpaid rent and late fees succeed?

Legislation and Policy

16. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Act*.

17. Also considered and referred to in this decision are s. 23 and s. 34 of the *Act*, as reproduced here:

Requirements for notices

34. A notice under this Act shall

- (a) be in writing in the form prescribed by the minister;
- (b) contain the name and address of the recipient;
- (c) identify the residential premises for which the notice is given; and
- (d) state the section of this Act under which the notice is given.

Notice where landlord contravenes peaceful enjoyment and reasonable privacy

23. (1) Notwithstanding subsection 18(1) and paragraph 18(3)(a), where a landlord contravenes statutory condition 7(b) set out in subsection 10(1), the tenant may give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises on a specified date not less than 5 days, but not more than 14 days, after the notice has been served.

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

- (a) be signed by the tenant;
- (b) state the date on which the rental agreement terminates and the tenant intends to vacate the residential premises; and
- (c) be served in accordance with section 35.

Issue 1: Refund of Rent and Compensation for Inconvenience

Tenant's Position

18. The tenants claim for \$3500 in a refund of rent, which represents the entire monthly rent of \$1750/month for the months of July and August 2024, the entire time duration of their residence at the premises. They say they were unable to enjoy the use of the property because of the landlord's behaviour. They also claim for \$1150.10 in compensation for inconvenience, representing the cost of moving, on the same basis. They paint a general picture of a landlord who does not understand the landlord/tenant boundaries. More specifically, they pointed to several issues. The first issue was an alleged comment made before the move in date by the landlord that her (larger) dog would be a danger to the tenants' new puppy if the two were to meet. While this did not cause harm by itself, the tenants say that combined with the landlord's apparent view that she could use the enclosed lawn space whenever, the comment effectively denied them the use of the space to enjoy with their puppy. Second, they say the landlord was inappropriate in the number and nature of her complaints about the tenants to [REDACTED], which lead to one of the tenants being forced to deal with the matter at her workplace. Many of these comments apparently involved the landlord's objection to the house's windows being left open.

Third, they said the landlord directly interfered with their peaceful enjoyment by loudly screaming from the attached basement where she resided. They specified that this occurred only once in July but began to reoccur "almost every other day" after they had put in their termination notice in mid-August. Fourth and finally, they note an incident which they say occurred in the second week of August, where the landlord and several friends were smoking marijuana and having a loud conversation for about a half hour on the landlord's porch step, directly below the tenants' living room window. The tenants allege that this was an attempt to encourage them to close the windows.

Landlord's Position

19. The landlord denies commenting to the effect that her dog was a danger to the tenants' dog. She denies ever taking her dog into the back yard. She denies screaming. She says she did not interfere with the tenants right to peacefully enjoy the property.

Analysis

20. I will briefly discuss each individual incident separately, then address whether the four come together to amount to an interference with peaceful enjoyment which justifies a refund of rent.
21. First, the tenants say that the landlord warned them her dog was a danger to theirs, and that they felt unable to safely use the yard for their dog's enjoyment. They say the backyard was intended for their exclusive use. In support of this, they point to the section of the rental agreement which specifies that lawn care was the responsibility of the tenants and highlight that the backyard was accessible only through an exterior gate and an entrance to their rental unit. It did not connect to the landlord's basement apartment. They testified that the landlord entered the backyard but did not allege that she entered with her dog. The landlord denies saying her dog was a danger to theirs. She testified that her dog had a nervous disposition. She also testified that she never took her dog into the backyard.
22. Second, the tenants say the landlord made an excessive number of complaints to [REDACTED] and that these complaints had the effect of harassing one of the tenants at her workplace. Their evidence was supplemented in this respect by the testimony of their witness, who served as the property manager for this residential tenancy relationship, and generally functioned as a go-between during the tenancy. I found her evidence generally consistent and reliable. She testified that the landlord raised issues more often than most, estimating about three calls a week, and often these were items she found non-actionable. She said she would bring these issues to the attention of the tenants, as was her normal practice. This had the effect of confronting the tenant with tenancy issues at her workplace, which she takes issue with.
23. The landlord had retained [REDACTED] as her property manager before the tenancy began. The evidence seems clear that the landlord's interactions with [REDACTED] were motivated by that business relationship and does not suggest any deliberate attempt to harass the tenant at her workplace. The fact that the tenant was an employee of [REDACTED] was incidental. I do not find that it aggravates the impact of the landlord's actions. To the extent with which

the employment relationship complicated the tenancy, this is at least as much as due to the tenant's actions as the landlord's.

24. Third, the tenants allege that the landlord had screaming episodes which interfered with their ability to enjoy the property. They said this occurred once in July and then "almost every other day" starting 12-August-2024 up until they vacated on or about 18-August-2024, which suggests about 3-5 occurrences in total. The landlord denies this. Counsel for the landlord questioned why, if the tenants heard screaming, they did not check on the landlord's safety or contact the authorities. No video or audio evidence was submitted.
25. Fourth, the tenants complain of an incident where the landlord smoked marijuana on her front step and had a loud conversation with her friends for a half hour directly beneath their living room windows, and they infer that this was deliberately done to provoke them. The landlord does not dispute the incident occurred but says her front step was simply a convenient location, as she did not wish to smoke indoors. I find this a logical and satisfactory explanation. In any event, the entire incident was only a half hour long.
26. Considering the evidence in its totality, I find that the tenants have provided an insufficient evidentiary basis to support a finding on a balance of probabilities that the landlord interfered with the tenants' ability to peacefully enjoy the property to the extent that they ought to be granted a refund of rent. The evidence suggests that the landlord was ill-prepared for the unique stresses of the landlord-tenant relationship but does not lend itself to the conclusion that she broke the *Act* or the rental agreement in a way which warrants such a remedy.
27. Given that there was no evidence that the landlord ever allowed her dog into the backyard, I cannot find that the mere apprehension of such an event constitutes interference with peaceful enjoyment. I do accept the evidence of the witness that the landlord complained of issues, including non-actionable issues, at a rate significantly higher than average, but I do not find that it amounted to harassment amounting to interference with peaceful enjoyment. Further, the fact that the tenant had to contend with these issues in her workspace seems to be incidental, simply an unfortunate side-effect that employees of property management companies may have to deal with when they choose rental premises administered by their own company. Regarding the screaming episodes, I do accept the tenants' evidence that such events, more likely than not, occurred. While it is always difficult to assess competing witness credibility, the tenants account, particularly the first event in July, was consistent and had the ring of truth to it. I have no doubt that these events were disturbing and disrupting to the tenants. Nevertheless, considering the frequency and duration, and the fact that the issue never appears to have been raised with the landlord directly so that she could have an opportunity to explain or to remedy it, I do not find it sufficient grounds for the remedy sought, either by itself or in combination with other factors. Finally, I find no weight to the suggestion that the marijuana smoking incident interfered with the tenants' peaceful enjoyment. A single half-hour long conversation with the smell of marijuana smoke is insignificant.
28. The tenants' claim for a refund of rent and compensation for inconvenience fails.

Issue 2: Validity

Landlord's Position

29. The landlord takes the position that the tenants did not provide a valid termination notice when they ended the tenancy.

Tenant's Position

30. The tenants submit that they ended the tenancy via a notice for unreasonable interference with peace and enjoyment. This notice can be seen in their exhibit D-21, which was printed from the file management system used by [REDACTED].

Decision

31. For a termination notice to be valid, it must comply with all relevant sections of the *Act*.
32. D-21 is written but is not in the form prescribed by the minister, an apparent contradiction of s. 34(a) of the *Act*. However, s. 22(f) of the *Interpretation Act*, RSNL 1990, c I-19 says that in an Act or Regulation where a form is prescribed, deviations from the form not affecting the substance nor calculated to mislead, do not invalidate the form used. Therefore, not being in the form prescribed by the minister does not inherently render the notice invalid. D-21 does not contain the name of the landlord as defined above. It does contain the name and address of the property management company which, for some purposes, was acting as the landlord. D-21 identifies the residential premises it regards and identifies itself as being issued under s. 24 of the *Act*. As s. 24 is for contravention of peaceful enjoyment and reasonable privacy by a tenant, I take this as a typo. Clearly, the tenants intended to issue their notice under s. 23, which is for contravention of peaceful enjoyment and reasonable privacy by a landlord. Without evidence of actual prejudice or confusion, a mere typographical error does not render a notice invalid.
33. D-21 was not signed by the tenant. This is sufficient to render it invalid under s. 24(2)(a) of the *Act*.
34. The termination notice dated 12-August-2024 is invalid.

Issue 3: Unpaid Rent and Late Fees

Landlord's Position

35. The landlord claims \$3500 in rent for the months of September and October in lieu of proper notice, as she is entitled to 2 months' notice under s. 18(1)(c) of the *Act*.

Tenant's Position

36. The tenants claimed they issued a valid notice. In the alternative, they submit that the landlord did not seek new tenants and therefore did not fulfil her duty to mitigate her losses.

Analysis

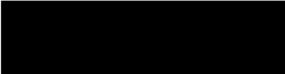
37. In accordance with policy 06-003 of the Residential Tenancies Program Policy and Procedure Guide, and the principle of mitigation of losses generally, a landlord has a legal duty to take all reasonable steps to mitigate their damages after a tenant abandons residential premises. In terms of loss of rental income, mitigation entails the landlord taking immediate steps to find new tenants to move into the property so that the landlord could once again collect rent.
38. In the present case, the landlord acknowledged that she did not seek new tenants. She was of the view that renting was not right for her, and she preferred to sell the property. This is of course her right. Nevertheless, the duty to mitigate remained in effect. Failing to seek a new tenant for the remaining two months bars her from recovering rent for that time period. The late fees flow from the rent and therefore are also unrecoverable.
39. The landlord's claim for unpaid rent and late fees fails.

Decision

40. The tenant's claim for a refund of rent and compensation for inconvenience fails.
41. The termination notice dated 12-August-2024 is invalid.
42. The landlord's claim for unpaid rent fails.
43. As neither party's claim was successful, no order is made with respect to costs.

25-November-2024

Date


Seren Cahill
Residential Tenancies Office