

Residential Tenancies Tribunal

Application 2024-0816-NL

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 9:00 AM on 9 October 2024.
2. The applicant, [REDACTED], hereinafter referred to as "the tenant", attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as "the landlord", attended by teleconference, representing himself and [REDACTED], hereinafter referred to as "the landlord" who did not attend.

Preliminary Matters

4. The tenant did not supply an affidavit of service; however, stated he served the landlords electronically [REDACTED] & [REDACTED] at 5:44 PM on 25 September 2024 (T#1). A notice of rescheduled hearing was also sent out on 7 October 2024 (T#2). The landlord did not dispute service. As service was in accordance with the *Residential Tenancies Act, 2018*, the hearing proceeded.
5. There is a written monthly rental agreement (T#3) which commenced on 15 February 2023 with rent set at \$1200.00 due on the 1st of each month. There was a security deposit of \$900.00 collected on the tenancy prior to occupancy, still in possession of the landlord.
6. The tenant amended his application to seek hearing expenses.
7. In a proceeding under the Residential Tenancies Act, 2018, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicant has to establish that his/her account of events are more likely than not to have happened.

Issues before the Tribunal

8. The tenant is seeking:

- The validity of termination notice issued by the landlord's;
- A refund of rent of \$8400.00; and
- Hearing expenses of \$20.00.

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in Sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).
10. Also relevant and referred to in this decision are Sections 10, 16, 18, 23, 29, 34 and 35 of the *Act*, along with *Policy 13-002: Rental Increases and Rebates*, of the Residential Tenancies Program.

Issue 1: Validity of Termination Notice

Tenant Position

11. The tenant testified on 25 July 2024, the landlords issued him a termination notice under Section 18 of the *Residential Tenancies Act, 2018* with a request for him to vacate the rental premises by 31 October 2024 (T#4). The tenant stated this termination notice was issued by the landlord and signed by [REDACTED].
12. Firstly, the tenant questioned the validity of this termination notice as it was signed by one landlord and issued by another.
13. Secondly, the tenant testified that the Section 18 notice had been issued in retaliation for a number of separate reasons, much of which was also articulated in a written summary (T#7).
 - The tenant testified since their occupancy in February 2023, they noticed in July 2023, [REDACTED] began interacting with them in what he described as an "aggressive" fashion. In August 2023, she began having issues regarding "our cooking" as she did not like the tenants use of particular spices. He testified she claimed she was allergic to those spices, had knocked on the door of the rental premises on multiple occasions to ask if they were using spices and informed the tenant and his family she was not feeling well from the tenant's use of those spices.
 - When she was in attendance for inspections, the tenant stated [REDACTED] was verbally confrontational towards his family. He testified she informed his daughter during an inspection, they would have to move out of the rental premises. The tenant stated during inspections, she invaded his personal space asking him, "when are you moving". The tenant stated that had been another situation when she yelled at his wife, "when are you leaving stupid?". The tenant testified he had contacted the Human Rights Commission in regard to alleged inappropriate actions of [REDACTED]
[REDACTED]

- The tenant also testified that he had made multiple requests for repairs to the rental premises. He supplied evidence which indicates on 17 June 2024 (T#5) and 24 July 2024 (T#6), the tenant had sent requests for repairs to the rental.
- The tenant testified on 24 July 2024, a decision from previous applications (2024-0247-NL and 2024-0271-NL) had been issued at which time the landlords were made aware a previous termination notice they issued to the tenants was deemed invalid. On 25 July 2024, he was issued a new termination notice. The tenant noted that other decisions from *Residential Tenancies* included a “cooling off” period between termination notices, and he felt this should be considered.

Landlord Position

14. The landlord testified the termination notice was served electronically to the tenant on 25 July 2024 at 9:25 AM and disputes it was in retaliation.
15. He also disputes that [REDACTED] was acting inappropriately toward the tenant and his family and supplied a written summation outlining their position (L#1).
16. The landlord did not dispute that [REDACTED] was frustrated with the tenants remaining in the rental premises on 25 July 2024. He testified that his wife comes from a culture where, “people don’t” hide their emotions, it may be viewed as aggressive, but it is normal for her in her culture”. He did not dispute that his wife had asked the tenants when they would be vacating.
17. The landlord testified after he and his wife were issued the decision on 24 July 2024 in regard to applications [REDACTED] and they were made aware of the requirements of issuing a termination notice as defined in the *Act*, they continued to wish to gain vacant possession of the rental premises. He described it as, “a continuation of the process”.
18. The landlord testified the termination notice issued to the tenant on 25 July 2024 complied with the requirements of the *Act* and the tenant and his family remain in the rental premises as of the date of the hearing (9 October 2024).

Analysis

19. To be valid, the termination notice (T#4) must comply with all relevant sections of the *Act*. Section 18(2), 18 (9) and 34 identify the technical requirements of the termination notice.

Notice of termination of rental agreement

Section 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;

20. **Section 18 (9)**

In addition to the requirements under Section 34, a notice under this section shall

- (a) *be signed by the landlord;*
- (b) *be given not later than the first day of the rental period;*
- (c) *state the date on which the rental agreement terminates and the tenant is required to vacate the residential premises; and*
- (d) *be served in accordance with section 35.*

Section 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.*

21. T#4 is in writing in the form prescribed by the minister. It contains the name and address of the recipients. It identifies the residential premises for which it was given. It states it is issued under s. 18 of the Act. It therefore complies with s. 34.

22. T#4 was signed by one of the landlord's, [REDACTED], and provided to the tenant by the other landlord, [REDACTED] on 25-July-2024, 6 days before the first day of the relevant rental period. The tenant's suggestion that the notice is rendered invalid as it was signed by one landlord and served by the second landlord is inaccurate. T#4 states the date on which the rental agreement is to terminate, 31-October-2024, and this date is the last day of a rental period. It was served electronically in accordance with s. 35(2)(f) of the Act. T#4 therefore complies with s. 18(9).

23. T#4 provides three full months' notice, as required by s. 18(2).

24. The only remaining way T#4 could be found invalid is if it was issued for an improper purpose in contravention of s.29(1) 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.

25. The tenant argues that the landlord, [REDACTED] is “aggressive” and verbally confrontational. The tenant stated that the landlords have behaved in a discriminatory manner and as such has contravened his human rights under the *Human Rights Act*. I accept that the tenant alleges feeling harassed; however, this tribunal’s jurisdiction applies to the *Residential Tenancies Act, 2018*, where the relationship of a landlord and tenant exists in respect of residential premises. This jurisdiction does not extend to determining whether there is a violation of the *Human Rights Act*, and individuals who feel discriminated against or harassed have the ability to file a complaint with the *Human Rights Commission*. Nonetheless, the allegation can be considered in the context of the Residential Tenancies Act. In accordance with Section 29 of the Act as stated above, I find that the tenant has failed to show that the landlord coerced, threatened, intimidated or harassed in retaliation for, or for the purpose of deterring the tenant from, making a complaint or application in relation to the residential premises.
26. The tenant also argues that the landlords issued a termination notice in retaliation for two separate requests for repairs to the rental premises (T#5 & T#6). The landlord denies this allegation and notes that both requests from 17-June-24 and 24-July-24 were addressed, and repairs made on 13-Aug-24 and 14-Sept-24. I note that the repairs were affected several weeks before the stated termination date on the s. 18 notice. Given that this termination notice was issued on the date immediately following notification that a previous termination notice issued was invalid (reference [REDACTED] [REDACTED] it is probable that the landlords were, as they claim, attempting to correct an action that they had initiated on 30-Sept-23. In this regard, I find that the tenant has failed to show that the landlord issued a termination notice in retaliation for, or for the purpose of deterring the tenant from, making a complaint or application in relation to the residential premises.
27. The tenant also contends that the termination notice was issued in retaliation for a previous termination notice being deemed invalid (reference [REDACTED] [REDACTED]; and that there should be consideration for a “cooling off” period. The landlord denies this allegation and states that this was a “*continuation and correction of an action that was begun on Sep 30, 2023*”, and there has been no change in the landlord’s intent to terminate the rental agreement. In reviewing the aforementioned decision, it is noted that a previous termination notice was deemed invalid as it failed to meet a stipulation under s.18(9) of the *Act*. It is not unreasonable to determine that the landlords sought to correct this technical error and issue a termination notice which meets all requirements as per the *Act*. Again, I find that the tenant has failed to show that the landlord issued a termination notice in retaliation for, or for the purpose of deterring the tenant from, making a complaint or application in relation to the residential premises. With respect to a “cooling off” period; the *Act* does grant that authority to the director should it be deemed warranted given the individual circumstances. However, the previous order issued on 24-July-24 did not contain such a stipulation.
28. Based on the evidence in totality, I find that the termination notice is a valid notice.

Decision

29. The Section 18 Notice to Terminate - Standard issued by the landlords on 25 July 2024 with a request for the tenants to vacate by 31 October 2024 is a valid notice.

Issue 2: Refund of Rent

Tenant Position

30. The tenant is seeking refund of rent of \$8400.00 over 14 months of the tenancy due to the landlord's impact on their peaceful enjoyment of the rental property. The tenant states "*I believe a rental agreement includes the property itself and to be able to enjoy the property. Even though we are at the physical property, to peacefully enjoy it is 50%*". He further breaks down his reasoning in T#10, which he supplied as evidence in reference to events which he alleged had transpired since taking occupancy in July 2023. As specified by the tenant in T#10, "*The value of the rent has been \$1200.00 per month since the harassment started in July 2023. I request you [the adjudicator] to determine that the value of the rental increase derived from the loss of enjoyment of the property is equivalent to \$600.00 per month since July 2023 to the present time. That is 14 months X \$600.00 = \$8400.00. Note that this value should be updated to the date that a decision is made*".

31. Along with his testimony, the tenant supplied a written summary (T#10) in which he outlines his perspective of events which has transpired during their tenancy. He stated that the landlords requested the tenants not use spices, requested they not open the windows of the rental premises, not rearrange furniture, they fail to respond to the tenants' greetings, that there are too many property inspections by the landlords, and excessive noise throughout the tenancy. He offered testimony that the actions of the landlord including aggressive verbal behavior, invading his personal space during property inspections, consistently asking the tenants when they would be vacating the rental premises, and excessive noise of the landlords, which all impacted on their peaceful enjoyment of the basement apartment.

32. The tenant testified there had been situations when he spoke with the landlord about his concerns with the noise and supplied an email to the landlord (T#9) as evidence. He stated the noise was particularly impacting their daughter who was in school and required quiet for studying and sleeping. The tenant testified both banging and music was common between 7 AM and 11 PM, "several times a week". He provided four pieces of audio evidence (T#11) but noted that it did not fully offer a complete picture as there had been, at times, situations where the noise created, "reverberations downstairs".

33. The tenant testified the landlords completed multiple inspections which were unnecessary. The tenant stated they felt the inspections were not necessary and the landlords had changed times scheduled for the inspections.

Landlord Position

34. The landlord disputed the tenant's claim for a refund of rent and denied impacting on the tenant's peaceful enjoyment of the rental premises. He testified "we do make noise, but we are living our own life". The landlord disputed the "arbitrary" amount of compensation which the tenant is seeking.
35. The landlord supplied a written summation outlining their position on the claims against them (L#1). L#1 indicates the landlords had been engaged in renovations of a room which involves moving furniture, taking off baseboards, sanding and vacuuming. This piece of evidence described these renovations as being completed, "intermittently, when we have time. Every second or third weekend or occasionally during the week. When we do make noise, it is reasonable, and it is not frequent".
36. The landlord testified the inspections were required and noted that the tenant had issued multiple requests for repairs as noted herein. The landlord supplied a written summation of events and their response to the current application (L#1). In review of L#1, the landlord notes inspections scheduled and/or completed on the following dates and reasons:
 - 20 August 2023 – inspection completed; humidity concerns observed
 - 3 January 2024 – inspection scheduled and cancelled due to landlord being ill
 - 21 January 2024 – inspection completed; tiles and grout in bathroom cleaned and concerns observed with possible condensation and mold
 - 3 March 2024 – inspection scheduled and cancelled due to unexpected visitors
 - 28 April 2024 – inspection completed
 - 8 June 2024 – inspection completed; concerns observed bathroom lights, dryer and flooring issues
 - 22 July 2024 – inspection completed
37. The landlord evidence supplied (L#1) indicates due to the tenants not vacating after being issued termination notices, they felt it was reasonable to complete inspections to ensure the rental premises was not damaged and being well kept.

Analysis

38. In analyzing this claim, I must consider section 16 of the *Act*, as reproduced below:

Section 16: Rental Increase

...

(5) Where a landlord discontinues a service, privilege, accommodation or benefit or a service, privilege, accommodation or benefit is unavailable for a period of time, and the discontinuance or unavailability results in a reduction of the tenant's use and enjoyment of the residential premises, the value of the discontinued service, privilege, accommodation or benefit is considered to be an increase in the amount of rent payable.

(6) The director may, upon hearing an application under section 42, value a service, privilege, accommodation or benefit discontinued or unavailable for a time under subsection (5).

39. Further to the above, Residential Tenancies Policy 13-002 states: “*A tenant may be entitled to a rental rebate where a rental increase has occurred other than in the manner permitted under the Act. When a service is discontinued (i.e. Washer and dryer no longer provided), or when an accommodation becomes unavailable (i.e. Use of garage is no longer provided), the value of the service or accommodation may be considered a rental increase. Where rent is paid and a tenant gives a landlord a notice under sections 20, 21, or 23, and it is determined that the notice was valid, the tenant may be entitled to a rental rebate.*”

40. I accept the testimony from the tenants in that they believe they have been harassed and that the landlords have interfered with their peaceful enjoyment. I also accept the landlord’s testimony in that they believe there has been no harassment and no interference with peaceful enjoyment. I decline to make a determination as to whether or not the landlords have, on the balance of probabilities, contravened s.10(7)(b) of the Act by unreasonably interfering with the tenants peaceful enjoyment, as it is unnecessary to render a decision on this issue.

41. Based on the information in totality, there was no testimony or evidence offered by the tenant to indicate that any services of the rental premises were discontinued or made unavailable. If the tenants had felt it necessary to issue a termination notice for cause to the landlords under section 23 of the *Act* and subsequently were required to vacate the premises; an argument could potentially be made that the alleged interference with peaceful enjoyment resulted in a discontinued service, privilege, accommodation or benefit, which could lead to an entitlement to a rental rebate. In this instance, the tenants have not exercised their rights under the *Act*, and in fact are challenging the validity of a standard termination notice issued by the landlord. Given this, it is reasonable to assume they seek to remain in the premises.

42. As there was no loss of service, privilege, accommodation or benefit, no ‘increase in rent’ occurred in a manner unprescribed by the *Act*. Hence, there is no entitlement to a rental rebate.

Decision

43. The tenant’s request for a refund of rent does not succeed.

Issue 3: Hearing Expenses

Relevant Submission

44. The tenant paid \$20.00 for the application fee and is seeking reimbursement. The tenant submitted a copy of the receipt to support the claim (T#12).

Analysis

45. In accordance with Section 12-1 of the Residential Tenancies Policy Manual: Costs, the

director has the authority to order “an unsuccessful party to an application to the pay costs to a successful party to an application”. As the tenant was unsuccessful in his application no costs will be awarded.

Decision

46. The tenant’s claim for hearing expenses does not succeed.

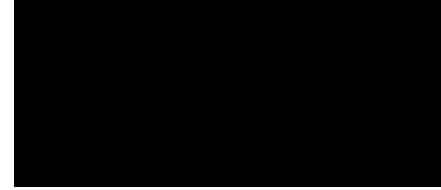
Summary of Decision

47. The Section 18 Notice to Terminate- Standard issued by the landlords on 25 July 2024 with a request for the tenants to vacate by 31 October 2024 is a valid notice.

48. The tenant’s claim for refund of rent and hearing expenses does not succeed.

20 February 2025

Date



Michael Reddy, Adjudicator
Residential Tenancies Office