

Residential Tenancies Tribunal

Application 2024-1085-NL

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 9:07 AM on 16 December 2024 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant”, attended the hearing.
3. The respondent, [REDACTED], hereinafter referred to as “the landlord”, attended the hearing.

Preliminary Matters

4. The tenant supplied an affidavit (T#1) with her application indicating the landlord was served electronically ([REDACTED]) on 4 December 2024 at 2:32 PM by a virtual assistant service ([REDACTED]). The landlord did not dispute service. In accordance with the *Residential Tenancies Act, 2018* this is good service.
5. The details of the claim were presented as a month to month written rental agreement (T#2) which commenced on 1 June 2024 until on or about 26 August 2024, with rent set at \$800.00 due on the 1st of each month. There was no security deposit collected on the tenancy.
6. The tenant amended her application to include 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 following:
 - Validity of the termination notice issued
 - Compensation for payment of utilities of \$200.00

- Compensation for inconveniences of \$1684.52
- Return of Possessions valued at \$182,328.50
- Hearing Expenses

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in Sections 46 and 47 of the *Act*.
10. Also relevant and referred to in this decision is Sections 19, 32, 34 and 35 of the *Residential Tenancies Act, 2018* (the *Act*), as well as Residential Tenancies Program Policy 12-001.

Issue 1: Validity of Termination Notice Issued

Relevant Submission

11. Along with her application, the tenant supplied a termination notice issued to her under Section 19 of *The Residential Tenancies Act, 2018* (T#2) on 14 August 2024 with a request for her to vacate the rental premises by 25 August 2024.

Landlord's position

12. The landlord claimed that the tenant had not paid rent for June, July, August 2024 and he issued a termination notice. He testified that they had been dating and she moved in with him, and that the rental agreement to pay \$800/month was only in place at her request because she was going through bankruptcy. The landlord testified that the relationship ended, and as there was a 'no contact order' in place between the parties, he gave the termination notice to his mother to provide to the tenant on 14 August 2024.

Tenant's position

13. When asked what it was about the termination notice she was disputing, the tenant disputed the validity of the method of service. She testified there was a letter put through the door, and she found it on the floor with her name on it. She was with the landlord's mother at the time, and did not know what the letter was for, and gave it to the landlord's mother who took it back to her place.

Analysis

14. To be valid, a termination notice must comply with all relevant sections of the *Act*. Considered and referred to are sections 19(1), 19(4), 24, and 34 of the *Act*,

Notice where failure to pay rent

19. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),

....

(b) where the residential premises is

(i) rented from month to month,

the amount of rent payable by a tenant is overdue for 5 days or more, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 10 days after the notice is served on the tenant.

...

(4) 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.

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.

15. The tenant submitted a copy of a termination notice (T#2). T#2 is in writing in the form prescribed by the minister. It contains the name and address of the recipient. It identifies the residential premises it regards. It identifies itself as being issued under s.19 of the *Act*. It therefore complies with s.34.
16. The notice was signed by the landlord. It specifies the date on which the tenancy is to terminate and the tenants are to vacate the premises. The landlord testified that it was served on the tenant personally via his mother in accordance with s. 35(2)(a). The tenant testified that it was put through the door and she found it on the floor, which is also a valid method of service in accordance with s.35(2)(d). Both methods comply with s.19(4) of the *Act*.
17. The notice was issued on 14 August 2024. At this point, according to the uncontested testimony of the landlord, rent had been overdue for more than 5 days. It gives a move out date of 25 August 2024, which is not less than 10 days after it was served. It therefore complies with s. 19(1)(b) of the *Act*.

Decision

18. T#2 complies with all relevant sections of the *Act* and is therefore valid.

Issue 2: Payment of utilities of \$200.00

Tenant Position

19. The tenant is seeking compensation of \$200.00 for payment of utilities. She testified that the written monthly rental agreement included utilities as a part of the rent. The tenant provided a copy of the signed written rental agreement (T#2).
20. The tenant testified that during her occupancy of the rental premises, she gave money to the landlord to pay the electrical bill because it was going to be disconnected for non-payment, and the utilities company informed the landlord the electrical wiring at the rental premises had to be updated. The tenant did supply copies of several money transfers of varying amounts between herself and the landlord between 14 May 2024 and 28 June 2024 (T#3); but testified that she had no direct evidence supporting her claim that she paid for the utilities.

Landlord Position

21. The landlord testified the utilities bill was under his name and disputed the tenant's claim that she had supplied him with money for the power bill. He stated the rental premises was 30 years old, there was nothing wrong with the wiring, everything was upgraded, and the utilities were not being disconnected.

Analysis

22. The rental agreement lists utilities as a service included with the rent, and thus is identified as the responsibility of the landlord. The landlord testified that the utilities bill was in his name, and this was not disputed by the tenant.
23. The tenant claims that she gave the landlord monies to pay the utility bill. There was evidence of money transfers between both parties as indicated above. T#3 reflects money transfers between the two parties, with random amounts of monies being exchanged, but not specify any transaction related to the electric bill. There was little evidence presented, other than contradictory testimony between the parties. I am unable to determine on the balance of probabilities which of the conflicting testimonies is the more accurate. I conclude that I have insufficient evidence to determine what, if any, monies were paid to the landlord by the tenant for the purpose of paying utilities. This portion of the tenants claim does not succeed on evidentiary grounds.

Decision

24. The tenant's claim for payment of utilities does not succeed.

Issue 3: Compensation for inconveniences of \$1684.52

Tenant Position

25. The tenant claims \$1684.52 for inconveniences she incurred after her and her son vacated the rental premises on 26 August 2024. The tenant testified those inconveniences include the costs for paying rent at another location, the costs of meals,

the costs of her son's medication which she left at the premises after they vacated and she could not obtain, and the cost of clothing for her son. Along with her application, the tenant supplied a Compensation for Costs of Inconveniences form (T#4). This form includes a list of 108 items, most of which are personal belongings related to issue # 4 (to follow); however, there are 4 items listed as food (\$535.59), clothing (\$476.11), gas (\$338.04) and medicine (\$98.27) for a total of \$1448.01. The tenant testified that she left the premises and moved to a hotel with her son and left most of their belongings behind. She stated that she attempted to go back the following day but the father of the landlord refused to allow her entry and told her to contact the RCMP; as a result she was unable to get her sons medication, clothing, etc. The tenant testified that she had receipts "at the hotel" for meals, purchasing clothing for her son, etc. but did not provide them as evidence as she wasn't aware she needed to submit them but just keep them.

Landlord Position

26. The landlord disputed the claims of the tenant he was responsible for any inconveniences the tenant incurred after vacating as, "it was her fault. She put a no contact order on me". He stated that he was not at the premises because she had a no contact order in place, and testified the tenant had not left any medications at the rental premises. He recalled his father getting a call from the RCMP after she left asking if he would provide the medication left behind, and that his father looked everywhere and couldn't find anything.

Analysis

27. No documentary evidence was provided in relation to this claim, and this tribunal only has the word of the tenant, which the landlord disputes. The tenant testified that she did have receipts, but didn't provide them as she wasn't told they had to be provided, just kept. As the applicant, it is the tenant's responsibility to prove their claim. The landlord cannot be said to have had the opportunity to dispute these claims if never given the opportunity to review or challenge them. This portion of the tenants claim fails on evidentiary grounds.

Decision

28. The tenant's claim for compensation for inconveniences does not succeed.

Issue 4: Return of Possessions valued at \$182,328.50

Tenant's Position

29. The tenant testified that when she and her son vacated the rental premises in August 2024, she had no choice but to leave some of their personal belongings and make arrangements to have someone come at a later date to have the items removed. The tenant stated she did find a friend with a truck who was going to help her remove the remainder of their personal belongings, but they were prohibited from doing so by the landlord's father. The tenant testified she attempted to obtain her personal belongings on four separate occasions since vacating the rental premises, with the most recent being in October 2024. She stated that all attempts have been without success, and that she

cannot afford to hire a moving company as was suggested by the landlord. The tenant is seeking permission to enter the property and have their possessions returned.

30. Along with her application, the tenant supplied a Compensation for Costs of Inconvenience (T#4). This list included (among others) 98 items which can be classified as personal belongings. In support of her position, the tenant supplied a witness statement (T#5) from a “trusted friend”, in which the individual stated which stated that she was “familiar with her personal belongings and private matters” and committed to validating her belongings if any questions arise”. It is noted that this ‘statement’ is not signed or sworn; hence it has little to no evidentiary value.

Landlord’s Position

31. The landlord testified that the tenant left the premises on 26 August 2024 and took a lot of her personal belongings with her, along with groceries and other things. However, while he questioned the tenant’s valuation of the belongings, he did not dispute the fact that there are still a lot of personal belongings of the tenant and her son remaining in the rental premises. The landlord said that after the tenant vacated he placed all the belongings “upstairs”. He couldn’t say for certainty that everything she had listed was still left on the property as he packed up what was left downstairs, but didn’t go through her things left upstairs, in dressers, etc. and it all remains “upstairs”.
32. The landlord testified due to there being a no contact order in place, he and his parents did not wish for the tenant to be on the rental property without police presence. He stated the tenant was encouraged to secure a moving company to attend to obtain her personal belongings. The landlord confirmed that as of the date of hearing, the no contact order remained in place.

Analysis

33. Section 32 of the *Residential Tenancies Act, 2018* states:

Abandoned Personal Property

32.(1) Where a tenant abandons or vacates a residential premises and leaves personal property on the residential premises, the landlord shall either

- a) remove the personal property and immediately place it in storage; or
- b) store the personal property on the residential premises in a safe manner.

(2) The personal property stored under subsection (1) shall be stored for not less than 30 days unless the tenant takes possession of the personal property before the 30 days have elapsed.

(3) A landlord who stores a tenant’s personal property under subsection (1) shall, at the earliest reasonable opportunity,

- a) provide the Director with an inventory of the property; and

- b) provide the tenant with a copy of the inventory, if the landlord can locate the tenant.

(9) Where a tenant or owner does not take possession of personal property within the 30-day period, the landlord may sell the personal property subject to the terms and conditions set by the Director.

- 34. The tenant claims that she has personal belongings remaining in the rental premises and is seeking permission to enter the property and have her possessions returned. The landlord does not dispute that the tenant has personal property remaining, which continues to be stored on the premises as per s.32(1)(b). He argues that these belongings remain due to the tenant having a 'no contact order' against him and he and his parents do not feel comfortable allowing her on the premises. He suggested that he would not be opposed to releasing the belongings if the tenant were to secure a moving company to come in, pack up and remove those belongings on her behalf.
- 35. I accept that this is a difficult situation for both parties, complicated by a no contact order in place between the parties. However, when the 30-days (as referenced in s.32(2) above) were up, the landlord could have made application to the director under the *Act* to either dispose of or sell the personal belongings. The landlord did not make such an application. With that said, this tribunal can only deal with the application from the tenant for the purpose of this decision.
- 36. The tenant has a responsibility to have all personal property removed from the residential premises in a timely fashion, and it has been several months to date. With regard to the tenant's obligations, I accept that she has made attempts to obtain her belongings but was impeded from doing so by the landlord who demonstrated little flexibility with respect to allowing "reasonable" access to the premises. I also accept that the tenant has financial challenges that prohibits her from hiring a moving company.
- 37. I accept that both parties were negligent in handling the situation properly. As such, I find that the tenant has 30-days from the date this *Decision* is received to have the personal belongings removed from the residential premises without any interference from the landlord.

Decision

- 38. The tenant's claim to have possessions returned succeeds.
- 39. The landlord or person representing the landlord shall allow the tenant and / or a person(s) representing the tenants reasonable access to the property that is mutually agreed upon without interference, until such time as the tenant's personal belongings is removed.

Issue 5: Hearing Expenses

Analysis

40. Section 12-1 of the Residential Tenancies Policy states that in general, claimable costs may include the filing fee and costs incurred serving the other party with the application. The tenant testified that she paid the \$20.00 filing fee, and a \$30.00 fee charged to affirm her affidavit of service. The tenant submitted a receipt only for the \$20.00 hearing fee (T#6). As the tenant's claim has been partially successful, the landlord shall pay the \$20.00 filing fee.

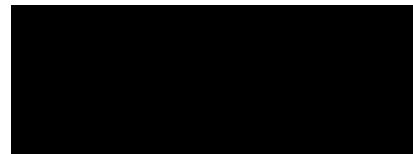
Decision

41. The tenant's claim for hearing expenses succeeds in the amount of \$20.00.

Summary of Decision

42. The tenant's claim to have possessions returned succeeds.
43. The landlord shall allow the tenant and/or a person representing the tenants reasonable access to the property that is mutually agreed upon without interference, until such time as the personal belongings is removed.
44. The landlord shall reimburse the tenant \$20.00 for hearing expenses.

7 February 2025
Date



Michael Reddy, Adjudicator
Residential Tenancies Office