

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0029-01

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:16 AM on 11 January 2022 via teleconference.
2. The applicant, [REDACTED] hereinafter referred to as "the tenant", participated in the hearing. The respondent, [REDACTED] hereinafter referred as "the landlord", joined the hearing about an hour after it had commenced.

Issues before the Tribunal

3. The tenant is seeking the following:
 - A determination of the validity of 2 termination notices issued to her,
 - An order for a refund of rent in the amount of \$900.00,
 - An order for a payment of \$21,600.00 in compensation for inconvenience,
 - An order that repairs be carried out at the rented premises,
 - An order for a payment of \$1000.00 in compensation for damages, and
 - An order for a payment of \$1500.00 in "other" expenses.

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 are section 7, 19 and 34 of the *Residential Tenancies Act, 2018*, and Residential Tenancies' policy 4-2 – Tenant Request for Repairs.

Preliminary Matters

6. The tenant amended her application at the hearing and stated that she was now seeking a refund of rent in the amount of \$2400.00.

Issue 1: Determination of Validity of Termination Notices

Relevant Submissions

7. The tenant stated that she had entered into a rental agreement with the landlord on 08 September 2008. The agreed rent is set at \$300.00 per month.
8. With her application, the tenant submitted 2 termination notices which were issued to her in the summer of 2021.
9. The first notice is a hand-written note in which the landlord states that he has to carry out some maintenance at the property and, also, because the tenant has stopped paying her rent, he wants her to move at the end of August 2021. The tenant stated that this notice was given to her sometime in July 2021.
10. The second notice, dated 06 August 2021, is a standard form notice issued by this Section, and it states that the landlord is terminating the rental agreement under section 19 of the *Residential Tenancies Act, 2018* (notice where failure to pay rent). That notice had an effective termination date of 16 August 2021.
11. The tenant is seeking a determination of the validity of both of these notices.

Analysis

12. Section 34 of the *Residential Tenancies Act, 2018* states

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.*

At the hearing, I pointed out to the tenant that as the first notice, issued to her sometime in July 2021, does not meet any of the requirements set out here, it is an invalid notice.

13. With respect to the second notice, that notice does meet all of the requirements set out in section 34 of the *Act*, just quoted. The relevant subsections of section 19 of the *Residential Tenancies Act, 2018* state:

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,

(ii) rented for a fixed term, or

(iii) a site for a mobile home, and

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.

14. The tenant acknowledged at the hearing that she had not paid any rent to the landlord between June 2021 and January 2022. Accordingly, the landlord was in a position, on 06 August 2021, to terminate the rental agreement under this section of the *Act*. However, this notice is also invalid. As it was given to the tenant on 06 August 2021, it had to specify a termination date which was “not less than 10 days after the notice” was served on the tenant. As the words “not less than” are used here, these 10 days are to be “clear” days, meaning that in counting those days, one does not count the date the notice was issued nor the date the tenant is required to vacate. So, on 06 August 2021, the earliest date

the landlord could have required the tenant to vacate would have been 17 August 2021. Hence, that notice is not valid either.

Decision

15. The 2 termination notices issued to the tenant are invalid.

Issue 2: Repairs

Relevant Submissions

The Tenant's Position

16. The tenant stated that there are numerous deficiencies in her apartment and she stated that she had been complaining to the landlord about them for years, but he done no work at the unit.
17. The tenant stated that 04 June 2021, she issued the landlord with a Tenant's Request for Repairs form and it identified the following issues:
 - All patio, stairs, roof underneath patio
 - The main roof
 - Living room ceiling
 - Cooking stove
 - Refrigerator
 - Window in bedroom
 - Window in bedroom bathroom
 - Window in living room
 - Window in porch
 - Window in spare room
 - Frame around patio door
 - Plumbing and taps in bedroom bathroom
 - Plumbing and taps in main bathroom
 - All flooring
 - Plumbing underneath kitchen sink
 - Countertop in kitchen

The notice states that some of these repairs are to be carried out immediately, while others are to be done by 02 July 2021, and still some others by 31 July 2021.

18. At the hearing, the tenant voiced her complaints about each of these issues and photographic evidence was reviewed concerning each item.

19. In summary: the 3 patios attached to the tenant's unit have some rotting boards, while others need to be nailed down, and some support posts are tilted. The roof has holes in it and is leaking, and it has been temporarily patched by the landlord with cushion flooring. A burner on the stove does not properly work, and the refrigerator does not adequately cool the tenant's food. All of the windows are drafty and the ceiling in the living room has been leaking for several years—the landlord supplied the tenant with underlay for the ceiling as a way to prevent heat loss. The plumbing in the 2 bathrooms and the kitchen is leaking, and the tenant suspects that there may be mold under the floors in the unit.
20. The tenant stated because the landlord had not carried out these repairs, she has been withholding her rent since June 2021. She claimed that she was also withholding it because the landlord had not supplied her with a copy of the *Residential Tenancies Act* or a copy of their rental agreement. The tenant stated that she may have been provided with a copy of her rental agreement when she moved in in 2008, but she is unable to find now.

The Landlord's Position

21. The landlord claimed that it was the tenant who had caused the bulk of this damage. He claimed that she had tore down the ceiling in her apartment and that she had been modifying the patio so that she could kennel her pet dog.
22. The landlord did acknowledge that some repairs were required, and he claimed that he would carry these out when the tenant moved out. He pointed out that he had given her several eviction notices already and she refuses to move. He argued that she refuses to vacate because the rent is so cheap.
23. And with respect to the rent, the landlord complained that she has not paid any rent to him in months and she is now thousands of dollars in arrears. He argued that it is not fair that the tenant is living in his unit, rent free, and is allowed to demand that all this work be carried out.

Analysis

24. I pointed out to the tenant at the hearing that a tenant is not permitted to withhold her rent in order to compel a landlord to comply with his obligations to maintain a property in a good state of repair. I also told her that it is policy with this Section that we would not hear an application for a request for repairs in those circumstances.
25. With respect to her argument that she could withhold her rent as she had not been supplied with the *Act* or a copy of her agreement, I refer to section 7 of the *Act*, which states:

Provision of rental agreement and information

7. (1) At the time a landlord and tenant enter into a rental agreement, the landlord shall provide the tenant with a copy of this Act and the regulations, and where requested by the landlord, the tenant shall sign an acknowledgement of receipt.

(2) Where a landlord and tenant enter into a written rental agreement, the landlord shall provide the tenant with a copy of the signed rental agreement within 10 days after it is signed, and where requested by the landlord, the tenant shall sign an acknowledgement of receipt.

(3) Where a landlord and tenant enter into an oral or implied rental agreement, the landlord shall provide the tenant with a written notice containing the information prescribed in the regulations within 10 days after entering into the rental agreement, and where requested by the landlord, the tenant shall sign an acknowledgement of receipt.

(4) Notwithstanding the terms of a rental agreement, where a landlord has not complied with subsection (2) or (3), the tenant's obligation to pay rent is suspended and the landlord shall not require the tenant to pay rent until the landlord complies with subsection (2) or (3).

26. With respect to the landlord's obligation to provide the tenant with a copy of the Act, section 7.(4) does not permit a tenant to withhold her rent where a landlord does not comply with that obligation. Although a tenant may withhold her rent where she has not been provided with a copy of her rental agreement, the Act does not allow a tenant to withhold that rent when she can't find the copy of the agreement that she had been previously supplied with.
27. As the tenant's rent is not paid and up-to-date, in accordance with policy 4-2, I find that the tenant's claim for an order requiring the landlord to carry out repairs does not succeed.
28. I also note that the tenant testified that she was in the process of looking for a new apartment, anyhow.

Decision

29. The tenant's claim for an order requiring that the landlord carry out repairs to the rental unit does not succeed.

Issue 3: Refund of Rent - \$2400.00

Relevant Submissions

30. Because the landlord had not carried out the required repairs to the unit, the tenant is seeking an order for a refund of rent for the period from June 2021 through to January 2022—a total of \$2400.00.

Analysis

31. I pointed out to the tenant at the hearing that she had not paid any rent during the period identified here.

Decision

32. The tenant's claim for a refund of rent does not succeed.

Issue 4: "Other" Expenses - \$1500.00

Relevant Submissions

33. The tenant stated that sometime in either 2009 or 2010 the landlord had asked to use an outlet in her apartment. She is seeking compensation in the amount of \$80.00 for the electricity the landlord had used at that time. No electricity bills or other corroborating evidence was submitted with her application.
34. The tenant also complained that because of the leak which had occurred in her living room, the charger for her laptop got wet. She is seeking the costs of replacing that charger. No receipt or estimate, nor any other corroborating evidence, was submitted with her application.
35. The tenant also testified that she had paid a fee of \$20.00 to file this application and she claimed that she had spent \$30.00 printing documents. No receipt was submitted for the costs of printing documents, but the receipt for the filing fee is on file with her application.

Analysis

36. Regarding the electricity usage, the laptop charger and the costs of printing documents, no evidence was presented by tenant to substantiate the costs she is seeking here. Hence those claims do not succeed.
37. Regarding the filing fee, as the tenant's claim has been partly successful (see below), the landlord shall pay that hearing expense.

Decision

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

Issue 5: Compensation for Damages - \$1000.00

Relevant Submissions

39. The tenant stated that the refrigerator she had been supplied with when she moved into the unit was very old and she complained that the fan inside of it was not working properly. As a result, the tenant testified that her food was not cooling adequately and it would spoil quickly.
40. She testified that she has had various meats, cheeses, vegetables and fruits go bad in that refrigerator, just after several days, and she also claimed that her milk would sour after 2 days.
41. In June 2021 she verbally informed the landlord about the matter, and she testified that she had also sent him a text-message in July 2021 asking him to repair the refrigerator. That matter is also identified in the submitted request for repairs.
42. The tenant is seeking \$1000.00 in compensation for the food that she has had to dispose of because the refrigerator was not working. No receipts were submitted with her application.

Analysis

43. I accept the testimony of the tenant in this matter and I find that her refrigerator is not working as well as it should. No receipts were submitted with her application to support her claim for an award of \$1000.00, and I am of the view that if the tenant was aware that her food was spoiling in that refrigerator after a few days, she ought to have taken some steps to minimize her losses, instead of repeatedly allowing her food to spoil.
44. I find that \$400.00 is a fair award

Decision

45. The tenant's claim for compensation for damages succeeds in the amount of \$400.00.

Issue 6: Compensation for Inconvenience - \$21,600.00

Relevant Submissions

The Tenant's Position

46. The tenant stated that because of the state of disrepair at the unit, she argued that she is entitled to a rebate of half the rent she had paid to the landlord since she moved into the unit in 2009—\$21,600.00.
47. The tenant stated that the ceiling has been leaking since 2009 and her floors are always wet as a result.
48. She also complained that early in her tenancy she had been experiencing problems with the baseboard heaters, and she claimed that they would “cut in” but would not turn off when the desired temperature was reached. It took the landlord 2 years before he had electricians visit the unit to repair those heaters.
49. The tenant also stated that she had been having issues with the electrical outlets, and it was not until 2020, 2 years after she had been experiencing these issues, that the landlord again sent electricians to the unit to repair them. After that visit, the tenant complained that these electricians had left 2 holes in the walls and that the bathroom mirrors were left on the floor. The tenant had to re-hang those mirrors herself.

The Landlord's Position

50. The landlord denied that the ceiling had been leaking since 2009, and he pointed out that he did have the baseboard heaters and outlets repaired, as requested. He also reiterated his claim that the patio is structurally sound and he claimed that he had had an engineer inspect.

Analysis

51. It was not disputed that the landlord had repaired the outlets and the baseboard heaters. No evidence was presented by the tenant, though, to corroborate her claim that it took the landlord 2 years to address those issues and no evidence of any written request for repairs was submitted with her application.
52. Regarding the leak in the ceiling, I accept her claim that it is leaking, and that it had been an inconvenience to have water coming into her living room when it rained. Insufficient evidence was presented at the hearing which would allow me to determine when the leak began, but I was satisfied that this was a matter the landlord was aware of. I award the tenant a total of \$600.00 in compensation for that inconvenience.

Decision

53. The tenant's claim for compensation for inconvenience succeeds in the amount of \$600.00.

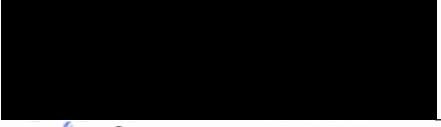
Summary of Decision

54. The tenant is entitled to a payment of \$1020.00, determined as follows:

- Compensation for Damages \$400.00
- Compensation for Inconvenience \$600.00
- Hearing Expenses \$20.00
- Total \$1020.00

28 October 2022

Date


John R. Cook
Residential Tenancies Tribunal