

Residential Tenancies Tribunal

Application [REDACTED]
Application [REDACTED]

Decision 21-0404-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:16 AM on 05 January 2022 via teleconference.
2. The applicants, [REDACTED] hereinafter referred to as “tenant1” and “tenant2”, respectively, participated in the hearing. The respondent, [REDACTED] hereinafter referred as “the landlord”, was not in attendance.

Issues before the Tribunal

3. The tenants are seeking the following:
 - A determination of the validity of 2 termination notices issued to them in November 2021, and
 - An order for a payment of \$150,000.00 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 is rule 29 of the *Rules of the Supreme Court, 1986*.

Preliminary Matters

6. The landlord was not present or represented at the hearing and I was unable to reach her by telephone. This Tribunal’s policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme*

Court, 1986. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, where the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as he has been properly served. With their application, the tenants submitted an affidavit stating that the landlord had been served with the application, by registered mail, and the associated tracking history shows that it was delivered on 30 November 2021. As the landlord was properly served, and as any further delay in these proceedings would unfairly disadvantage the tenants, I proceeded with the hearing in her absence.

7. The landlord had filed a counterclaim to this application, [REDACTED] through which she was seeking an order for vacant possession of the rented premises. As the landlord did not attend the hearing to give any evidence in support of her claim, her application was dismissed.

Issue 1: Determination of Validity of Termination Notices

Relevant Submissions

8. The tenants stated that they had entered into a 1-year, fixed-term lease with the landlord in 2017. The agreed rent was set at \$800.00 per month and the tenants stated that they had paid a \$500.00 security deposit.
9. The tenants stated that they were in the process of removing their possessions from property and testified that 05 January 2022, the day of this hearing, is the last day of their tenancy, and they have moved into a new apartment.
10. With their application, the tenants submitted copies of 2 termination notices that the landlord had issued to them in November 2021, and through their application, they are seeking a determination of the validity of both.
11. The first notice is a hand-written notice, dated 15 November 2021, and it states that the tenants have to move within the next 90 days.
12. The second notice, dated 17 November 2021, is a standard form notice issued by this Section, and it states that the landlord is terminating the rental agreement under section 24 of the *Residential Tenancies Act, 2018* (notice where tenant contravenes peaceful enjoyment and reasonable privacy). That notice had an effective termination date of 23 November 2021.

Analysis

13. 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 tenants that as the first notice, dated 15 November 2021, does not meet requirements (a) and (d), set out here, it is an invalid notice.

14. Although the second notice is in the correct form and identifies the section of the Act under which it was issued, it is also invalid. Such a notice can only be deemed to be valid where there is evidence that the tenants had violated statutory condition 7(a), set out in section 10, which states:

Statutory conditions

10. (1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:

...

7. Peaceful Enjoyment and Reasonable Privacy -

- (a) The tenant shall not unreasonably interfere with the rights and reasonable privacy of a landlord or other tenants in the residential premises, a common area or the property of which they form a part.*

As the landlord had not attended the hearing to provide any evidence of unreasonable interference on the part of the tenants, that second notice is also invalid.

Decision

15. The termination notices issued to the tenants in November 2021 are not valid notices.

Issue 2: "Other" Expenses - \$150,000.00

Relevant Submissions

16. With their application, the tenants submitted a list of complaints about the landlord and about the state of the rental unit, and they are seeking a total of \$150,000.00 in compensation. The list runs as follows:

- Refusal to give keys
- Intrusions during the night
- Basement infected with feces, worms and insects
- Cat was attacked and tortured
- Backing out of appointments
- Damage to front door, toilet, sink and linoleum
- TV cable cut
- Insulted by landlord's worker

Keys

17. The tenants stated that when they moved into the unit in 2017, the landlord did not provide them with keys to the property. As a result, tenant1 claimed that 1 person had to constantly stay in the apartment to ensure that no one entered and removed their possessions. They claimed that for the past 4 years they had been asking the landlord to provide them with keys, but she refused. The tenants are not seeking any monetary compensation for this portion of their claim.

Intrusions

18. The tenants claimed that the landlord had entered their apartment, with no prior notice, on several occasions, and while they were sleeping. As evidence of those entries, the tenants pointed to photographs the landlord had submitted with her application, showing the inside of their apartment. Tenant1 suggested that they be compensated to the tune of \$50,000.00 for those intrusions as it infringed their dignity.

Feces, worms, insects

19. Tenant1 complained that there had been an overflow of sewage in the basement and in the kitchen sink, and he stated that this had affected the water quality at the rental unit. Because of the poor water quality, he stated that he became infected with worms and he claimed that they were coming out of his arms. He stated that he had contacted the [REDACTED] about the matter, but after conducting tests, they determined that there was no issue with the water.
20. No photographs were submitted with the tenants' application showing the basement or any overflow. The tenants are seeking \$100,000.00 in compensation.

Tortured cat

21. Tenant1 stated that, in 2003, he was in a relationship with a woman, █. Her grandson, █, "was in the family" of the landlord and did work for the landlord on occasions. One day, while █ was at the property carrying out some work for the landlord, tenant1 discovered that his cat had been killed and that its "eyes were out of its head". When he relayed to █ that his cat had been killed, █ "made a face" and uttered some strange noises. Tenant1 claimed that █ is a cruel person, and he inferred that he had killed his cat. The tenants are seeking \$100,000.00 in compensation from the landlord.

Backing out of appointments

22. Tenant2 stated that there were about 10 occasions where the landlord had informed the tenants that she would be visiting the unit to address some of their maintenance concerns, but she complained that she would later back out. Tenant1 claimed that although this was very inconvenient, he was not seeking any monetary compensation.

Damage to front door, toilet, sink and linoleum

23. Tenant1 stated that in December 2020, the landlord had sent some workers to the rental unit to replace the front door. In the course of carrying out those repairs, though, the workers damaged the property, and this damage included the removal of some insulation. Because the insulation was removed, the tenants were unable to heat their apartment and they claimed that their electricity bills increased as a result. Tenant1 stated that they are seeking \$100,000.00 in compensation. No utility bills were submitted with their application.

TV cable cut

24. The tenants stated that the TV cable was cut in 2021, and as a result they were not able to call 911 or the operator. The tenants figured that it was the landlord's workers who cut the cable when they were carrying out repairs at the rental unit, but they did not witness them doing so. The tenants were responsible for paying for their own utilities, but they did not contact their utility company to repair the cable as they feared that the landlord's workers would cut it again. The tenants are seeking \$300.00 in compensation.

Insulted by landlord's worker

25. Tenant1 stated that one of the landlord's workers had said to him that he did not enjoy working in apartments that were unkempt. Tenant1 took this as an insult and he argued that his apartment was always well-kept. He claimed that the worker's remark was an insult to his dignity and reputation, and he is looking to have his dignity restored.

Analysis

26. Regarding the complaints for which the tenants are not seeking any monetary compensation from the landlord, I make no remarks here—this includes the issue of the keys, the landlord's habit of backing out of scheduled appointments, and any insults made by the landlord's workers.
27. Regarding the remaining complaints, I will make 2 general points.
28. The first concerns evidence. The burden of proof lies with the applicant to establish, on the balance of probabilities, that their version of events is correct. In attempting to meet that burden, the applicant will usually present their own first-hand testimony concerning their version of events, but a finding that their version of events is more likely to be the case than not ought to be bolstered by corroborating evidence—this can include witness testimony, photographs, videos, receipts, or reports from doctors, police, inspectors, etc.
29. The tenants assert that there was a sewer back up at the apartment which had in turn affected the water quality at the apartment leading to an infection of “worms”. The tenants presented no photographic evidence showing that there ever had occurred such a back-up, no evidence, e.g., from a municipal inspector, establishing that the quality of their drinking water was affected, and no evidence from a medical professional establishing any link between the quality of the drinking water, or the conditions at their apartment, and this alleged infection. Without any corroborating evidence, I have to conclude that the tenants have failed to meet their burden of proving that their version of events is correct.
30. The tenants also allege that a family member of the landlord had killed their cat, and that her workers had cut their cable. But the tenants stated that they did not witness these events, but rather inferred them, and they again failed to produce any corroborating evidence which would lead me to conclude that those inferences are sound. The tenants also failed to produce any evidence to corroborate their claims that the landlord's workers had damaged the apartment, that their heating bills had increased, or that the landlord had entered their unit without notice. Without such corroborating evidence, I am have to conclude that the bulk of the tenant's claims are no more than unfounded allegations, and they can be dismissed as such.
31. My second point concerns the costs the tenants are seeking through this application. I pointed out to the tenants at the hearing that it is not the role of this Board to award punitive damages, that is, to issue monetary awards where the purpose of the award is to punish the respondent.
32. Rather the role of this Board in issuing a monetary award to a tenant is to compensate them for a loss they have actually suffered as a result their landlord breaching their rental agreement or violating the *Residential Tenancies Act, 2018*. Not only, then, does the tenant have the burden of proving that such a breach or violation occurred, they also have the burden of establishing the actual

costs they had incurred as a result. That burden is usually met by submitting receipts, bills, invoices or quotes. For example, the tenants allege that their heating costs increased as a result of the landlord's workers removing insulation from the walls. But not only did the tenants fail to provide any corroborating evidence to convince me that the landlord's workers had removed that insulation, they also failed to submit any evidence, e.g., bills from their electricity supplier, showing the costs that they had incurred. Likewise for the rest of their claims.

33. For these reasons, the tenants' claims do not succeed.

Decision

34. The tenants' claim for compensation for "other" expenses does not succeed.

Summary of Decision

35. The termination notices issued to the tenants in November 2021 are not valid notices.
36. The tenants' claim for compensation for "other" expenses does not succeed.

19 October 2022

Date

