

Residential Tenancies Tribunal

Application
Application [REDACTED]

Decision 21-0390-05

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 1:45 p.m. on 12-October- 2021.
2. The applicants, [REDACTED] and [REDACTED] hereinafter referred to as “landlord1, landlord2, landlord3 and landlord4” attended by teleconference.
3. The respondent and counter applicant, [REDACTED] hereinafter referred to as “tenant3” did not attend.
4. The landlords have a witness, [REDACTED] who is a neighbor.

Preliminary Matters

5. Tenant3 did not attend. Tenant3 filed an application 2021-No.390-SJ, she wasn’t in attendance to present her evidence, and therefore this file is dismissed.
6. Tenant3 was not present or represented at the hearing and I was unable to reach her by telephone at the start of the hearing. 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 she has been properly served. The landlords submitted an affidavit ([REDACTED] #01) with their application stating that they had served the tenant notice of the hearing electronically, to an email provided to them by the tenant, on September 29, 2021. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.

7. There are two other tenants [REDACTED] who declined to testify, they did not attend this hearing, there are emails and documents referring to these tenants throughout the testimony and decision. They will hereinafter be referred to as "tenant1" and "tenant2."
8. During the presentation of the claim the issue of whether this is a landlord tenant relationship arose. Prior to deciding the issues included in the Application for Dispute Resolution [REDACTED]#02) this tribunal must decide if a landlord tenant relationship exists.

Issues before the Tribunal

9. Does a landlord tenant relationship exist between the two parties

Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
11. Also relevant and considered in this decision is Section 1-2 of the Residential Tenancies policy manual and Section 2: definitions, Section 24: Notice where tenant contravenes peaceful enjoyment and reasonable privacy, Section 34: requirement for notices, section 35: Service of documents, of the *Residential Tenancies Act, 2018*.

Issue 1: Does a landlord tenant relationship exist

Relevant Submissions

12. Landlord1 stated that there was no agreement with Tenant3. They had a rental agreement ([REDACTED]#3) with 3 other individuals who all were named in the agreement in 2018. This summer only one of the initial tenants was still living at the apartment; Tenant1. Over the past three years, as individuals would move out, with the consent of the landlords, Tenant1 would advertise and bring in a new tenant. Tenant 1 had advertised and brought in Tenant3 as another roommate. The Landlords claim that Tenant3 is a roommate of Tenant1, but not the Landlord's tenant.
13. Landlord1 stated that the cost of rent is \$1,200.00 a month, and each person paid \$400.00. Each individual would pay rent directly to the landlords. The rent was paid into a joint bank account set up by the landlords for the rental unit. Tenant3 was paying rent directly into the account set up for this rental unit, she had provided the Landlords with her email/contact information and she was given the Landlord1's contact information.
14. Tenant3 had made arrangements with her [REDACTED] worker to pay rent directly into the account set up by the Landlords for rent for this property. Landlord1 said Tenant3 moved in July 15, 2021 and [REDACTED] pays Tenant3's portion of the rent.

15. The Landlords submitted a rent ledger [REDACTED] #08) which shows each of the three tenants' payments for rent beginning July 01, 2021 until October 01, 2021. Each tenant is noted individually and their payment is recorded showing the amount of payment, the date and the name of the tenant who paid. Each of the three months indicate payments by [REDACTED] for rent on behalf of Tenant3.

Analysis

16. The Residential Tenancies Policy 1-2, Definitions of landlord and tenant "The division has no authority in agreements where there was never any intent to create a landlord and tenant relationship. The relationship of landlord/tenant must clearly exist in order to begin a claim in this division."
17. Although the landlords and Tenant3 did not enter a written agreement, the landlords did give Tenant1 permission to bring in new roommates when other roommates left the unit. In addition to this, they accepted direct payment for rent from any new tenants for the unit in question. Tenant3 was provided the Landlords contact information. The Landlords were provided Tenant3's contact information. Tenant3 also was given the banking information where her payment was to be sent.
18. The decision to allow the original tenant to bring in new roommates and then for each new tenant to pay the Landlords separately, instead of the roommates paying Tenant1 and Tenant1 then having the sole responsibility to pay the entire amount of rent, indicates that the Landlords are renting the unit to each of the tenants, thereby making the relationship with Tenant3 and the Landlords, a landlord tenant relationship.
19. Section 2 (h) of the *Residential Tenancies Act; 2018* states:

2. In this Act

.....

(h) "rental agreement" means a written, oral or implied agreement between a landlord and a tenant in which the tenant is granted the right to use or occupy a residential premises on the condition rent is paid;

.....

20. The landlords permitted Tenant3 to live at the unit and accepted rent on her behalf for the right to rent the unit, which indicates that there is an implied rental agreement. Landlord3 said they would have been willing to sign an agreement with this tenant, for the full amount of rent, when the other two tenants moved. However, in light of the issues created by Tenant3, Landlord1 stated that their hope is to have her vacate the property.

Decision

21. The landlords have an implied rental agreement and are in a landlord tenant relationship with Tenant3. This Tribunal will address the issues outlined in the Landlords' Application for Dispute Resolution.

Issues before the tribunal

22. The landlords are seeking the following:

- Rent paid \$1,600.00
- Utilities Paid \$60.97
- Security Deposit Paid \$600.00
- Vacant Possession
- Hearing expenses reimbursed \$20.00

Issue 2: Rent paid \$1,600.00

Relevant Submissions

23. The landlords submitted a rent ledger (■#08) showing rent owing and paid. In July there is \$1,200.00 rent due and there is a payment of \$400.00 on July 5, 2021 from both Tenant1 and Tenant2; who are living there at that time.

24. On July 16, 2021, \$600.00 was deposited for Tenant3. She had taken possession on July 15, 2021. This put the rent in a \$200.00 surplus position for August.

25. Tenant3's rent for the remaining \$200.00 due for August was paid on July 30, 2021 for August rent and the other two tenants paid their \$400.00 each on August 2, 2021.

26. Both Tenant1 and Tenant2 moved out on August 16, 2021.

27. In September the rent is due on the 1st for \$1,200.00. Tenant3 paid her portion of \$400.00, leaving a balance of \$800.00. This occurred again in October, leaving a balance of \$1,600.00

Analysis

28. The written rental agreement (■#03) for the original tenants in 2018 was for \$1,200.00 per month. The landlords permitted the original tenant to bring in roommates and each person paid \$400.00 of the \$1,200.00. This tenant left the property and did not give notice. Tenant1 was the individual whose name was on the written agreement. There is no evidence that Tenant3 agreed to be responsible for the \$1,200.00 a month.

29. ■ is paying the portion of rent due by Tenant3. There was no evidence to show that Tenant3 or the Landlords had approached ■ to pay \$1,200.00 for rent of the unit.

30. Section 10.4: Statutory conditions, of the *Residential Tenancies Act: 2018* states:

4. Mitigation on Abandonment - Where the tenant abandons the residential premises, the landlord shall mitigate damages that may be caused by the abandonment to the extent that a party to a contract is required by law to mitigate damages.

31. The Landlords' written agreement with Tenant1 is no longer valid, Tenant1 abandoned the property leaving the landlords in a position where they should mitigate their loss by either terminating their implied agreement with Tenant3 or finding renter's for the other two rooms. The evidence of emails sent by Tenant1 (████#05) show that the Landlords' are without rent because Tenant1 and Tenant2 abandoned the property without proper notice.

Decision

32. The landlords do not have a written, verbal or implied agreement for rent of \$1,200.00 per month, for the property in question, with the remaining tenant; Tenant3. The agreement that they had with Tenant1 in 2018 (████#03), is not binding on Tenant3.

33. Tenant3 has paid what has been her portion of the rent prior to the other tenants moving out and she is not in arrears. The landlords could have had her sign a new agreement when she moved in or when the others moved out and this would have clearly defined the agreement.

34. The landlords claim for rental arrears in the amount of \$1,600.00 fails.

Issue 3: Utilities Paid \$60.97

Relevant Submissions

35. Landlord4 said that Tenant3 owes utilities totaling \$60.97 and provided the utilities ledger (████#09) showing utilities owing from August 17, 2021 – September 03, 2021. The utilities were put in Landlord4's name after Tenant1 and Tenant2 moved out.

36. This ledger is for the utilities due once Tenant3 is the only remaining tenant in the unit.

37. Tenant3 changed the utilities into her name after September 03, 2021.

Analysis

38. Tenant3 changes the utility bill into her name after the two other tenants move. This indicates that she under the understanding that, she is responsible to pay utilities.

Decision

39. Tenant3 changes the utility bill into her name after the two roommates move, this indicates her responsibility for payment of that service.

40. The landlords' claim for utilities in the amount of \$60.97 succeeds.

41. Tenant3 will pay \$60.97 to the landlords for utilities owing.

Issue 4: Security Deposit paid \$600.00

Relevant Submissions

42. The landlords did receive a security deposit for the original lease in 2018. They did not require or ask new tenants to pay a security deposit.
43. Tenant1 has not requested the security deposit back as he did leave the lease early when he abandoned the property out of fear.
44. The landlords are aware that there has been damage done, as it was reported by Tenant1 to them.
45. If the landlords are to continue to rent to Tenant3 then they would want a security deposit as part of that agreement; they would prefer a security deposit of 75%.
46. The Landlord1 believes that the security deposit they are currently in possession of should be returned to Tenant1.

Analysis

47. The Landlords did not initially demand a damage deposit from Tenant3.
48. If the termination notice is not valid, they would want to enter a new rental agreement with this tenant and secure a damage deposit as part of that new agreement.

Decision

49. The landlords' request for a security deposit fails, if they choose to enter a written agreement with Tenant3, those parties will determine the expectations of that agreement.
50. This board will not dictate the terms of a future rental agreement between these parties.

Issue 5: Vacant Possession of the Rental Premises

Relevant Submissions

51. Tenant1 had given Tenant3 an eviction notice that was not followed. The Landlords do not have any information on the agreement or termination notice between the roommates.
52. The landlords served Tenant3 with a Notice to Terminate Early [REDACTED] #03) – for both failure to keep the premises clean as well as interference with peaceful enjoyment. The landlords acknowledge that the timelines didn't meet the standard of the Act, and will not be considered.

53. The landlords also served Tenant3 with a Notice to Terminate Early █ #04) - for interference with peaceful enjoyment. It is dated for 20-August-2021 with a termination date of 31-August-2021. It is signed by Landlord3 on behalf of all Landlords and Landlord4 testified that on the day it was signed, she posted it on the door, emailed to the address Tenant3 provided to them and emailed to Tenant3's Social Worker to the address provided by Tenant3.

54. The landlords served this termination notice due to information provided to them from Tenant 1 and Tenant2. Both individuals voiced concerns about the behavior of Tenant3. She had been told a number of times about smoking, which is not permitted in this unit, she had taken items belonging to the other roommates and she was involved in a volatile relationship with her boyfriend. Tenant 3 has been arguing and fighting all hours of the day and night, making it impossible for the other tenants to sleep, she has also damaged the house during these fights.

55. Landlord1 read an email sent to him by Tenant1 stating, on August 15, 2021, Tenant1 told the landlords that there was a disturbance that started at about 5:00 a.m., the fighting started in the apartment and continued out into the street. He reported that Tenant3 was pleading for her boyfriend to come back into the house and when he did, Tenant3 started assaulting him. During the fight Tenant3 started punching the doors and walls and causing damage. Tenant1 managed to get the boyfriend out of the house and wouldn't let him back in. Tenant3 was very angry that the boyfriend was kicked out of the house.

56. The next day, Tenant3's boyfriend came back and Tenant1 wouldn't permit him in, he became very aggressive and started pounding on the door and screaming at him.

57. The landlords submitted an email from Tenant1 █ #05) dated August 16, 2021 stating that Tenant3 has basically driven him out of the house, that he doesn't feel safe there and he is sorry that things have happened this way. Tenant1 also says he believes that Tenant2 will also be leaving.

58. The landlords confirmed they also received an email from Tenant2 saying she was leaving because of safety fears around the behavior of Tenant3.

59. Landlord1 said that they posted two notices to enter █ #05 & █ #06) to attempt to check the damages that were reported to them by Tenant1 and Tenant2. They were unable to access the house the first day, they do not have the new key. The second notice for the next day, Landlord4 was able to access the house, there was a strong smell of smoke, the smoke detectors had been disconnected, picture submitted █ #07), all the windows were open and the dryer was running in an attempt to dissipate the smell of smoke.

60. The Witness, a neighbor from the area, stated that there has been loud fighting, she can hear the fighting from her home. There have also been fights in the yard and one of the times there was mention of a knife. The boyfriend was also throwing rocks at the house. The Witness said Tenant3 and her friends smoke in the backyard and have thrown lit cigarettes in her yard. She is concerned about the possibility of a fire, they live in an older section of town and the homes are very close together. She attempted to speak to

Tenant3 about this, but Tenant3 was very aggressive and confrontational. Since that time they have continued to throw lit cigarettes into her yard.

61. The Witness and the landlords have all received complaints from the surrounding tenants and businesses. The Witness said a business owner in the area has had to leave her radio on, to drown out the noise coming from this unit. The police have been called to the address, but there is no information about the nature or source of these calls.

Analysis

62. Statutory condition 7.(a), set out in section 10.(1) of the *Residential Tenancies Act, 2018* 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 -

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.

....

63. According to Residential Tenancies Policy 7-05 Peaceful Enjoyment, interference of peaceful enjoyment is defined as: "an ongoing disturbance or activity, outside of normal everyday living, caused by the landlord or the tenant". Peaceful enjoyment may include, but is not limited to the following: (i) excessive noise; (ii) aggressive or obnoxious behaviour; or (iii) threats and harassment.
64. The Landlords and Witness have given testimony to describe not only the disturbances, but also statements that show the surrounding neighbours are also impacted by the disruptive behaviour.
65. The statutory requirement identified in paragraph 35 does not extend to the neighbours. As such, even if the tenant does unreasonably interfere with the peaceful enjoyment of the neighbours, this is not grounds for termination. This testimony is relevant however, in that it corroborates the testimony of the Landlords and the other tenants' claims of loud fighting and noise.

66. Tenant 1 and Tenant 2 left their home and would not testify out of fear of Tenant3. Their conversations and emails (#05) display their fear and the concern for their own safety.
67. Tenant1 and Tenant2's fear and the action of moving due to fear for their safety, causes me to find that Tenant3 is in violation of the peaceful enjoyment and reasonable privacy condition outlined in the *Act*.

and according to section 24 of this *Act*:

Notice where tenant contravenes peaceful enjoyment and reasonable privacy

24. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes statutory condition 7(a) set out in subsection 10(1), the landlord may give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises on a specified date not less than 5 days after the notice has been served.

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

be signed by the landlord;

state the date on which the rental agreement terminates and the tenant is required to vacate the residential premises; and be served in accordance with section 35.

68. The termination notice provided by the landlord (#04) adheres to the conditions outlined in the act and is a valid termination notice.

Decision

69. The landlords' claim for an order for vacant possession of the rented premises succeeds.
70. Tenant3 shall vacate the property immediately.
71. The tenant shall pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

Issue 5: Hearing Expenses \$20.00

72. The landlords have submitted their receipt for filing their application (#10). As their claim has been successful, Tenant3 is responsible for reimbursement of this fee.

Summary of Decision

73. The landlords are entitled to the following:

- Tenant3 shall pay the landlords for utilities totaling \$60.97, as well as, reimbursement for hearing expenses \$20.00, for a total of \$80.97 immediately.
- An order for vacant possession of their property
- The tenant shall pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

October 19, 2021 _____
Date

