

Residential Tenancies Tribunal

Application [REDACTED]
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Decision 21-0480-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:04 AM on 14 December 2021 via teleconference.
2. The applicant, [REDACTED] hereinafter referred to as "the tenant", participated in the hearing.
3. The respondent and landlord, [REDACTED] was represented at the hearing by [REDACTED] and [REDACTED].

Issues before the Tribunal

4. The tenant is seeking the determination of the validity of a termination notice issued to her on 03 October 2021.
5. The landlord is seeking the following:
 - a. An order for a payment of rent in the amount of \$1300.00;
 - b. An order for a payment of late fees in the amount of \$75.00;
 - c. An order for vacant possession of the rented premises; and
 - d. Authorization to retain the \$487.50 security deposit.

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.

7. Also relevant and considered in this case are sections 10, 15, 19 and 24 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

8. [REDACTED] amended the claim at the hearing and stated that she was now seeking an additional \$650.00 in rent, for a total claim of \$1950.00.

Issue 1: Rent - \$1950.00

Relevant Submissions

The Landlord's Position

9. [REDACTED] stated that she had entered into a 1-year, fixed-term lease with the tenant on 01 May 2018, and a copies of the renewed leases were submitted with both the landlord's and the tenant's application ([REDACTED] #1, [REDACTED] #1). The current rent is set at \$650.00 per month and it is acknowledged in the submitted leases that the tenant had paid a security deposit of \$487.50.
10. [REDACTED] testified that the tenant has not paid her rent since September 2021, and she is seeking an order for a payment of \$1950.00, in rent, for the months of October, November and December 2021.

The Tenant's Position

11. The tenant acknowledged that she had not paid her rent for those 3 months and she claimed that there was no requirement to pay that rent if she was being evicted.
12. The tenant complained that the reason she had been withholding her rent was because she was having numerous issues with the residents in the upstairs apartment.
13. The tenant complained that these residents are very noisy and these noises can be heard all through the night, preventing her from sleeping, and she stated that she now has to wear earplugs at night. She also complained that these residents are harassing and stalking her and that they are infringing on her human rights. She testified that whenever she makes any noises, plays any music or does any cooking, she can hear the residents getting upset with her.
14. The tenant stated that she had brought these complaints to the landlord and to the homeowners and those complaints were either downplayed or completely ignored. She argued that she does not have to pay rent to live in an apartment where she is harassed like this.

15. She also complained that in May 2019 her stove broke and it took the landlord 6 days to have it replaced.

Analysis

16. Although I have no reason to disbelieve the tenant's claim that her peaceful enjoyment is being interfered with by the residents in the upstairs' unit, I informed her at the hearing that tenants cannot unilaterally withhold rent in relation to complaints that she believes the landlord has failed to address. That decision, the decision to withhold rent, can only be made by the Director of Residential Tenancies after receiving an application seeking to have that matter addressed in that manner. Although the tenant had filed an application against the landlord, she had not indicated on that application that she was seeking an order for an abatement or a rebate of rent.
17. There is no dispute that the tenant had not paid her rent for the months of October, November and December 2021, and as the tenant had use and enjoyment of the rental unit during that period, I find that the landlord's claim succeeds.
18. As the landlord is also seeking an order for vacant possession of the rented premises, I find that she is entitled to a payment of rent to the date of the hearing and a per diem thereafter. I calculate that amount to be \$1599.18 (\$1300.00 for the period ending 30 November 2021 and \$299.18 for December 2021 (\$650.00 per month x 12 months ÷ 365 days = \$21.37 per day x 14 days)).

Decision

19. The landlord's claim for a payment of rent succeeds in the amount of \$1599.18.
20. The tenant shall pay a daily rate of rent in the amount of \$21.37, beginning 15 December 2021, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Late Fees - \$75.00

21. The landlord has assessed a late fee in the amount of \$75.00.

Analysis

22. Section 15 of the *Residential Tenancies Act, 2018* states:

Fee for failure to pay rent

15. (1) Where a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister.

The minister has prescribed the following:

Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed:

- (a) *\$5.00 for the first day the rent is in arrears, and*
- (b) *\$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00.*

23. As the tenant has been arrears since October 2021, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

24. The landlord's claim for late fees succeeds in the amount of \$75.00.

Issue 3: Validity of 03 October 2021 Termination Notice

Relevant Submissions

The Landlord's Position

25. █ stated that she had been receiving complaints from the residents in the upstairs unit about the sound of loud music and other noises coming from the tenant's unit. She stated that the police were called to the property in relation to those complaints on 01 October and 02 October 2021, and again on 2 other occasions after that.
26. █ also stated that the tenant had also called the police and informed them that the residents in the upstairs unit had been growing marijuana. █ stated that the police did not believe that accusation.
27. █ also read out an e-mail from 03 October 2021 in which the tenant accuses █ of being an alcoholic, and claims that █ keeps photographs of his female tenants. She again complains about the residents in the upstairs unit and states that she will see the landlord at the Tenancies Board.
28. Because of these issues, the landlord issued the tenant a termination notice on 03 October 2021, and a copy of that notice was submitted with the tenant's application (█#2). That notice was issued under section 24 of the *Residential Tenancies Act, 2018* (notice where tenant contravenes peaceful enjoyment and reasonable privacy) and it had an effective termination date of 09 October 2021.

The Tenant's Position

29. The tenant denied that she had been making any loud noises in her unit and she reiterated her claim that it was the residents in the upstairs unit that were harassing her and interfering with her peaceful enjoyment.
30. With respect to the e-mail that was read out by █ at the hearing, the tenant stated that there was nothing threatening in that e-mail and that each statement that she made was true.
31. The tenant is seeking the determination of the validity of the termination notice that was issued to her on 03 October 2021.

Analysis

32. 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 -

(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.

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

- (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.*
33. No credible evidence was presented by the landlord to establish that there had been any police visits to the property, or, if there were, whether those visits concerned any issues of noise violations or issues dealing with peaceful enjoyment.
34. With respect to the noise complaints, the only evidence submitted at the hearing concerning that issue was the testimony of [REDACTED] about what the residents in the upstairs apartment had complained to her about. That is hearsay evidence, and I therefore afford it little weight. No witnesses were called to give any first-hand account of what had been taking place at the residence to corroborate the landlord's accusations, and those accusations were all denied by the tenant.
35. The landlord has the burden of proving, on the balance of probabilities, that the tenant had been unreasonably interfering with the peaceful enjoyment of the residents in the upstairs unit. As the tenant denied those claims, and as the landlord's evidence amounted to no more than uncorroborated hearsay, I have to conclude that she has failed to meet that burden and that she has therefore failed to establish that she had grounds, on 03 October 2021, to issue the tenant a termination notice under this section of the Act.

Decision

36. The termination notice issued to the tenant on 03 October 2021 is not a valid notice.

Issue 4: Vacant Possession of Rented Premises

Relevant Submissions

The Landlord's Position

37. With her application, the landlord submitted a copy of a termination notice [REDACTED] #2) which she stated she had personally delivered to the tenant on 14 November 2021.

38. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 25 November 2021.
39. The tenant has not vacated the rented premises as required and the landlord is seeking an order for vacant possession of the rented premises.

The Tenant's Position

40. The tenant acknowledged receiving this notice, though she stated that she had received it by e-mail.

Analysis

41. Section 19 of the *Residential Tenancies Act, 2018* states:

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.

(2) Notwithstanding subsection (1), where the tenant pays the full amount of the overdue rent, including a fee under section 15, before the date specified in the notice under paragraph (1)(a) or (b), the rental agreement is not terminated and the tenant is not required to vacate the residential premises.

42. On 14 November 2021, when the termination notice was issued, the tenant was in arrears in the amount of \$1300.00 and had been in arrears since the beginning of October 2021. No payments have been made since the notice was issued and since then the rent for December 2021 has also come due.

43. As the termination notice meets all the requirements set out in section 19 of the Act, it is a valid notice.

Decision

44. The landlord's claim for an order for vacant possession of the rented premises succeeds.
45. 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: Security Deposit

46. According to the submitted leases, the tenant had paid a security deposit of \$487.50 on 03 April 2018. As the landlord's claim has been successful, she shall retain that deposit as outlined in this decision and attached order.

Issue 6: Hearing Expenses

47. The landlord paid a fee of \$20.00 to file this application. As her claim has been successful, the tenant shall pay that hearing expense.

Summary of Decision

48. The termination notice issued to the tenant on 03 October 2021 is not a valid notice.
49. The landlord is entitled to the following:
- A payment of \$1206.68, determined as follows:

a) Rent Owing	\$1599.18
b) Late Fees	\$75.00
c) Hearing Expenses.....	\$20.00
d) LESS: Security Deposit..... (\$487.50)	
e) Total.....	<u>\$1206.68</u>
 - An order for vacant possession of the rented premises,
 - A payment of a daily rate of rent in the amount of \$21.37, beginning 15 December 2021 and continuing to the date the landlord obtains possession of the rental unit,

- The tenant shall also 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.

16 December 2021

Date

