

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0566-05

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 10:06 a.m. on 07-February-2022.
2. The applicant, [REDACTED] hereinafter referred to as “the tenant” attended by teleconference.
3. The respondent, [REDACTED] hereinafter referred to as “the landlord” did not attend.

Preliminary Matters

4. The landlord was not present or represented at the hearing and when he was contacted at the start of the hearing he disconnected the call. 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. The tenant submitted an affidavit with her application stating that she had served the landlord with notice of the hearing, by email on 27-January-2022 at 1:36 p.m. She provided this board a copy of the sent emails (TT#01) containing notification of the hearing. As the landlord was properly served, and as any further delay in these proceedings would unfairly disadvantage the tenant, I proceeded with the hearing in his absence.

Issues before the Tribunal

5. The tenant is seeking:
 - Repairs made
 - Rent paid in trust to the director until repairs completed
 - Validity of termination notice
 - Hearing expenses reimbursed

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 decision are the following sections of the *Residential Tenancies Act, 2018*: Section 10: Statutory conditions, and Section 47: Order of Director.

Issue 1: Repairs made

Issue 2: Rent paid in trust to the director until repairs completed

Relevant Submissions

8. The tenant reports that she has a verbal rental agreement with the landlord. The rent is \$625.00 a month and includes utilities. The rent is paid on the 15th day of each month and the rental period is from the 15th day of the month to the 14th day of the following month. She moved into the apartment in June 2020. She said that the landlord requested a security deposit from her in November 2020; she paid \$200.00. He is still in possession of that deposit. She said that her rent is up-to-date.
9. The tenant said that she is seeking repairs made to the unit. She has a number of complaints about leaks, mold, problems with windows, however, she served her landlord with a Request for Repairs (TT#02) for issues with smoke coming into her apartment from the apartment above her, she will focus on this issue today.
10. The tenant reports that she lives in a colonial building in the downtown area, each floor has its own apartment. She is on the second floor. When she moved in, she was told this was a non-smoking building. She has an allergy to smoke.
11. This past October 2021, the individual in the 3rd floor unit started using his fireplace; he also smokes in that apartment. In addition to her health concerns, she has safety concerns, she said that she doesn't believe that the fireplaces are being serviced or inspected, that the building is really old and that she is concerned that it is a fire hazard.
12. The tenant provided this board with a number of pictures showing that the ceiling has separated from the crown molding (TT#03). She said that the gap along the seam permits the smoke from the upstairs apartment to come into her apartment.
13. She said that it is mostly in the evening that she is getting smoke in her apartment. She has to take allergy medication almost every day and she has to leave her door open because of the smoke.
14. When this began in October 2021 she started contacting her landlord to report the issue. She provided the text messages between them (TT#05). The landlord has sent someone to check out the issue on three separate occasions.

15. On 28-November-2021 the tenant signed a Request for Repairs form (TT#02). On 29-November-2021 she said she emailed the form to the landlord. The request is for repairs be made to seal her ceiling and that the fireplace be checked and approved to be used. She gives from 06-December -2021 until 31-December-2021 for this work to be done.
16. On 06-December-2021, the tenant said that, the landlord sends a security guard from the [REDACTED] and the upstairs tenant to check the issues with her apartment. The upstairs tenant is the person that she has the issue with. They both sign a paper (TT#06) saying that they had checked the apartment.
17. On 08-December-2021 the tenant said that she emails (TT#09) the landlord questioning why he would send the upstairs tenant (the person with whom she has the complaint) into her apartment as a representative of the company. She tells him he is not meeting his obligation and that he is violating her rights.
18. The tenant said that the landlord tells her in their text messages (TT#05) that there is no issue with her apartment, he tells to stop harassing the other tenants and that she has been given a termination notice and she should move. The landlord sent two termination notices for interference with peaceful enjoyment on 14-November-2021 (TT#07) and 08-December-2021 (TT#08).
19. The tenant said that she had a company, [REDACTED], come in and give an estimate (TT#04) for repairing the gap in her ceiling. The estimate includes the cost of installing airseal crown molding in the two bedrooms and hallway, as well as, painting of the ceiling. The total amount for the repair is \$747.50.
20. As per her Request for Repairs (TT#02) the tenant is requesting an order for the landlord to repair her ceiling, by sealing the gap, and that the fireplace be checked and approved to be used.
21. The tenant is also requesting to pay rent to the Director until such repairs are completed.

Analysis

22. Statutory condition 1, 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:

1. Obligation of the Landlord -

(a) The Landlord shall maintain the residential premises in a good state of repair and fit for habitation during the tenancy and shall comply with a law respecting health, safety or housing.

(b) Paragraph (a) applies regardless of whether, when the landlord and tenant entered into the rental agreement, the tenant had knowledge of a state of non-repair, unfitness for habitation or contravention of a law respecting health, safety or housing in the residential premises.

23. The tenant has reached out to the landlord on numerous occasions requesting that repairs be made to her ceiling and questioning the use of the fireplace in the apartment above her.
24. The tenant reported that the landlord did send someone on three separate occasions to check her issues, the landlord has stated in his communication that there is no issue with the apartment.
25. The landlord is aware of her complaint that the upstairs tenant is smoking and using his fireplace, and his response to the tenant is that there is no issue and she should stop harassing the other tenants; we can therefore presume that the landlord is in agreement with the tenant smoking and using the fireplace, which is well within his right.
26. It does not fall under our jurisdiction to make mandates on another person's peaceful enjoyment of their living space. Our only concern can be the confines of the tenant's apartment. We therefore do not have the authority to instruct that the other tenant to cease and desist his behavior to accommodate the tenant's needs.
27. The tenant's request to have her ceiling sealed brings us to the question, if smoke rises, and the tenant is below the apartment that contains the smoke, how is smoke seeping down from her ceiling? The tenant may be smelling the smoke the same way tenant's or neighbors can smell cooking from each other's homes. Sealing her ceiling may reduce the smell to some degree, but it would also probably come in from hallways and windows, it is not reasonable for the landlord to be expected to seal this apartment off from environmental factors because the tenant has allergies. Many people in the downtown area use fireplaces and woodstoves during the winter months and it does create an aroma of smoke.
28. The landlord is not in contravention of law respecting health safety or housing as outlined in Section 10.1(b). The tenant's application for repairs fails, and subsequently so does her application to pay rent to the Director until such repairs have been made.

Decision

29. The tenant's application to have repairs made to her ceiling and an inspection of another tenant's fireplace fails.

Issue 3: Validity of termination notice

Relevant Submissions

30. The tenant submitted the two termination notices that she received from the landlord. The first notice (TT#07) is signed and dated for 14-November-2021, there is no termination date. It is on a landlord's notice to terminate early – cause form and the reason given is for interference of peaceful enjoyment and reasonable privacy. She said she was served in person, she said that the upstairs tenant unlocked her apartment door and posted it on her bedroom door. She said that she was not given notice that they were entering her apartment, they did not knock and that the upstairs tenant was in possession of a key to her apartment.
31. The second notice (TT#08) is dated and signed on 08-December-2021 with a termination date of 15-December-2021. She received this notice on 08-December-2021 by email. It is on a landlord's notice to terminate early – cause form, and the reason given is for interference of peaceful enjoyment and reasonable privacy.

Analysis

32. Both termination notices are served under Section 24 of the Residential Tenancies Act, 2018, it states:

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. The first notice fails as it doesn't provide a termination date. It is not a valid notice. Further to this, there are concerns about the service of this document. Section 10.5 of the Residential Tenancies Act, 2018, states:

5. Entry of Residential Premises - Except in the case of an emergency, the landlord shall not enter the residential premises without the consent of the tenant unless

(a) notice of termination of the rental agreement has been given and the entry is at a reasonable time for the purpose of showing the residential premises to a prospective tenant or purchaser and a reasonable effort has been made to give the tenant at least 4 hours' notice;

(b) the entry is made at a reasonable time and written notice of the time of the entry has been given to the tenant at least 24 hours in advance of the entry; or

(c) the tenant has abandoned the residential premises under section 31.

34. The tenant questioned why the upstairs tenant is coming to her apartment to investigate claims made against his behavior, paragraph 17. This same tenant was provided access to her apartment with no notice, he didn't even knock at her door, and subsequently posted a termination notice on her bedroom door. This action could reasonably be seen by the tenant as a form of intimidation.

35. The second notice was served electronically, identifies the tenant, the apartment, the date signed and the date of termination. All of these identifiers are fundamental to the validity of the termination notice. The landlord, by virtue of not attending this hearing, has not provided any information to indicate the actions of the tenant that would justify an interference with peaceful enjoyment and reasonable privacy termination. This notice is therefore not valid.

Decision

36. The termination notices served on the tenant dated 14-November-2021 as well as 08-December-2021 are not valid.

Issue 4: Hearing expenses reimbursed.

37. The tenant submitted the receipt for \$20.00 for the cost of the hearing (TT#10) and as her claim failed, the landlord is not responsible for the cost of the application fee.

Summary of Decision

38. The tenant's application to have repairs to her ceiling and certification of another tenant's fireplace fails.

39. Landlord's termination notices dated 14-November-2021 as well as 08-December-2021 are not valid.

February 18, 2022

Date