

Residential Tenancies Tribunal

Application 2022-0697-NL

Decision 22-0697-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:02 a.m. on 27-September-2022.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as “tenant1 and tenant2” attended by teleconference.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as “landlord1 and landlord2” attended by teleconference.

Preliminary Matters

4. Tenant1 confirmed his affidavit (TT#01) that he served the landlords notification of today’s hearing electronically to their emails on 14-September-2022. Both landlords confirmed that they received their notification as stated.
5. The tenants amended their application to increase rent refunded from \$2,800.00 to \$3,500.00. They also added compensation for inconvenience \$2,500.00. They removed rent paid in trust as they are moving.

Issues before the Tribunal

6. The tenants are seeking:
 - Validity of termination notice
 - Rent refunded \$3,500.00
 - Compensation for inconvenience \$2,500.00
 - Hearing expenses \$20.00

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
8. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 10: Statutory conditions, Section 18 Notice of termination of rental agreement, Section 24: Notice where a tenant contravenes peaceful enjoyment and reasonable privacy, and Section 29: Termination for invalid purpose.

Issue 1: Validity of termination

Tenant's Position

9. Tenant1 said that there is a verbal rental agreement with the landlords. He said that they moved in on 24-May-2021. He said that the agreement is monthly from the 1st day of the month until the last and rent is due the first day of each month but often paid in advance of that date. The landlords are the parents of tenant1 and he said that when they initially discussed moving into the apartment the landlords offered \$600.00 a month but they chose to pay \$700.00 to help his parents out. There wasn't a security deposit required.
10. The tenants submitted two termination notices that were served on them. The first notice is signed and dated for 07-August-2022 with a termination date of 30-November-2022 (TT#02). Tenant1 said he had served the landlords a Request for Repairs on 06-August-2022 and the next day the landlords served them with a termination notice; he believes that this notice was served in retaliation. He said that they questioned the landlords about the validity of the notice and the landlords withdrew the notice.
11. Tenant1 said that the landlords then sent them a lease agreement (TT#05) but they had made changes to the current verbal agreement. The landlords had removed: one of the parking spaces, smoking and the washer and dryer. The tenants did not sign this agreement.
12. Tenant1 said that they then received another termination notice (TT#03) this is on a landlord's notice to terminate early – for interference with peaceful enjoyment and reasonable privacy. The notice is signed and dated for 02-September-2022 with a termination date of 02-October-2022.
13. Tenant1 said he doesn't agree that they have grounds for this notice. He said that they have given their notice to the landlords and will be moving out by 30-September-2022.
14. Tenant2 said that he has never acted in a threatening way against the landlords.

Landlord's Position

15. Landlord1 disputes the tenants' claim that they moved in on 24-May-2021. She said that they moved in August 2021 and that they were not expected to pay September's rent. She said that the first payment they received was on 29-September-2021 for October's rent.
16. Landlord1 said that she served the tenants with the first termination notice on 07-August-2022, by both text and email. She said that she sent them a text the very next day saying that they revoked the notice.
17. Landlord1 said that after they gave the initial termination notice the tenants demanded a lease agreement in writing. She said that she wasn't going to sign it, until they had signed it, because they could have made changes to the agreement. She said none of them signed the agreement.
18. Landlord1 said she contacted the Residential Tenancies Offices to receive some advice, they told her she could give the tenants a 5 day notice but she and her husband decided to give them a month. She said she went down to give them the second (TT#03) notice but no one answered the door, she said she posted it on the door and sent it by email on 02-September-2022.
19. Landlord1 said that the tenants told them, that they would be fighting the notice and they then gave their own notice to say that they would be out by 30-September-2022.
20. Landlord1 said that the reason for the notice for interference with peaceful enjoyment, is that they feel harassed by the tenants. She said that her other son helps his father with repairs and the tenants refused to permit the other son in the apartment and applied for a restraining order.
21. She said that on 19-August-2022 her dogs wanted to go out into the yard and the tenant was out in the yard with his dog so her dog couldn't go out.
22. She said that tenant2 tried to intimidate her when she went to do an inspection. She said she had given 24 hours' notice and when she was there they wouldn't allow her to video and would only let her take pictures.
23. She said that they contacted the police and told lies about her.
24. She also said that when landlord2 went down to the apartment to do a repair on 26-September-2022 tenant2 lunged towards him and he isn't going back until after they move.

Analysis

25. The initial notice served to the tenants was a Section 18 notice. This notice doesn't require a reason and is a standard notice where no cause is required. Both parties agree that this notice was cancelled. As the notice is cancelled it is no longer valid.

26. The second notice is a notice for cause under Section 24 of the Residential Tenancies Act, 2018, as follows:

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.*

27. 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.*
- (b) *The landlord shall not unreasonably interfere with the tenant's reasonable privacy and peaceful enjoyment of the residential premises, a common area or the property of which they form a part.*

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.

28. It is imperative that the landlords show that the notice for cause is within reason. I accept that the landlords are frustrated by their situation, however, they have not proven that the behavior of the tenants falls under the guidelines stated above. As they haven't proven that the tenants are interfering with their peaceful enjoyment, the notice is not valid.

Decision

29. The notices served to the tenants with termination dates of 02-October-2022 and 30-November-2022 are not valid.

Issue 2: Rent refunded \$3,500.00

Tenant's Position

30. Tenant1 said that there are a lot of repairs that are not being completed in the apartment. He said they are requesting rent refunded as follows: \$700.00 for August 2022 and \$280.00 for 40% of the apartment from October 2021 – July-2022. He said that they are unable to use parts of the apartment and that now the smell from the mold is so bad that they are unable to use any of the apartment.
31. Tenant1 said that the roof of the home has been in disrepair since 2018, he said that there are leaks in the front porch and kitchen. He provided pictures of the water damage to the inside ceiling (TT#05). He said that they cut a hole in one of the leaks and it was patched, there was mold present. . He said that throughout the tenancy he would informally notify the landlords whenever there was an issue or repair that needed to be done.
32. Tenant1 said that they didn't officially provide the landlords with a request for repairs until 05-August-2022 with a completion date of 01-September-2022. The tenants provided into evidence the Tenant's request for repairs form given to the landlords. The form identifies the following repairs to be completed:
 - Mold around bathtub
 - Leaking faucets in bathroom tub
 - Tub surround/tub
 - Leak in kitchen, leak in hall
 - 2 heaters burning smell
 - Pest control for mice/bugs
33. Tenant1 said that landlord2 cut a hole in the kitchen ceiling and covered it with tape, picture provided (TT#05), he said that they are unable to use the kitchen due to the leak.
34. Tenant1 said that they replaced two of the heaters at their own expense in June 2021.
35. Tenant1 said that the windows do not latch and that there is a gap that bugs come in through. He said it is as though you could pull it off the wall. Pictures provided (TT#05). He said that they could easily fix it with some caulking. He said he told the landlords about this in January 2021.
36. Tenant1 said that there are issues with mold throughout the apartment, in the bathroom, in the walls and in the ceiling from the leaks.

37. Tenant1 said that they contacted the City and requested an inspection, he doesn't have the results.
38. Tenant1 said that the panel box in the apartment was sparking. He told the landlords. It has been replaced.
39. Tenant1 said that when they moved in the bathtub was older and needed replacement. He refinished the tub. He said that the heat would have to have stayed on for three days for it to cure. He said that the last tenant didn't leave the heat on so it didn't cure correctly. Pictures provided (TT#05). The tub needed to be replaced. He said after the landlord installed the tub one of the outlets in his room didn't work.
40. The tenants submitted the text conversations with the landlords (TT#05) in the conversations are discussions of repairs from mid-August until September. In those conversations the tenants are clear that they expect full adherence to the *Residential Tenancies Act, 2018* when it comes to notification between the parties and that they want their rights adhered to under this Act. They are seeking rent refunded due to the repairs not completed and the loss of use of 40% of their apartment.

Landlord's Position

41. Landlord2 said that he put in a new ceiling and painted the entire apartment before the tenants moved in. He said he also installed laminate throughout.
42. Landlord1 said that the tenants do order a lot of take out, but she disputes that they are unable to use the kitchen, where the leak in the ceiling is.
43. Landlord1 said that she paid for 3 heaters and that the tenants paid for the rest, she said that they are installed.
44. Landlord2 said that he did fix the windows with the caulking in January, however, the tenants weren't happy with the work he had done. Landlord1 said that there is no latch on the window because of the style of window that was installed on the home.
45. Landlord1 said that the issues with mold in the bathroom is due to the area needing to be cleaned. She said when they complained of damp and mold they provided them with a dehumidifier.
46. Landlord1 said that when the City did the inspection they found no mold and told her that the apartment was "beautiful." She was hoping to have the report from the City before the hearing, however, she hasn't received it yet.
47. Landlord1 said that as soon as tenant1 told them that the panel box was sparking, they had an electrician come in immediately. The electrician fixed the panel box and while he was there installed a light in the hall.
48. Landlord2 said that they purchased a new tub for the apartment to install. When he was there recently putting in the tub, tenant1 said he had to make a phone call so the landlord would have to go. He then couldn't finish the repair. He said then they complained that the repair is not complete.

49. Landlord2 said that it's like a "home invasion" he said that when the tenants moved in first everything was good between them. Then he said that there were constant requests for repairs, but when he'd try to do the repairs the tenants would say that they weren't done well enough. He said his other son would help him with repairs and the tenants stopped him from coming to help. He also said that when he comes to do the repairs they say that he has to leave because they have to do something.

50. In the email conversations during August and early September, provided by the tenants (TT#05) there are ongoing attempts to make appointments to enter the apartment for repairs to be carried out after the landlords were served with a request for repairs.

Analysis

51. The tenants do pay rent for the use and enjoyment of the apartment and, as tenants, have certain rights under the Act. For example: according to Section 10 of the *Residential Tenancies Act, 2018*,

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.*
 - (a) *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.*

52. It is solely the responsibility of the landlord to maintain the premises. The landlord is to ensure that the premises is maintained in a good state of repair and fit for habitation. The landlords acknowledge that they are experiencing leaks and that there have been attempts to make those repairs.

53. The tenants said that they would informally make the landlords aware of issues that would arise in the apartment. This was ongoing throughout the October – present day time period, for which they are seeking a rent rebate. This summer the tenants officially requested that the work in the apartment be completed by serving the landlords a request to make repairs.

54. Residential Tenancies Policy 4 states:

Before submitting an application for Dispute Resolution seeking an order for the landlord to make repairs, the tenant must:

- **Serve a request to make repairs on the landlord and allow a reasonable time for the landlord to undertake the repairs; and**
- Ensure rent is not in arrears.

55. In paragraph 32 the tenants give to the landlords a request for repairs dated for 05-August-2022 with a completion date of 01-September-2022. The repairs required are to the kitchen and hallway ceilings, the heaters and the tub. According to the tenants' testimony in paragraphs 33, 34, and 39, these items are either repaired or the repair has started.
56. After the request for the repairs was made the tenants put barriers in the way of the landlord to impede his ability to make the repairs, they did this by refusing entry, and not giving adequate time for the repair work to be completed by asking the landlord to leave when in the middle of the work.
57. Residential Tenancies Policy 4 also states

Where a landlord fails to complete the necessary repairs within a reasonable period of time, the tenant may apply for the following:

- **rebate of rent (based on actual costs incurred- ie. Laundromat services, heat loss due to failure to repair window or door, or loss of use of a portion of the rental unit due to leaky roof, etc.);**
- reduction in rent (until such time as the necessary repairs are completed);
- rent to be paid to the Residential Tenancies Office in trust until an Order to make repairs is fulfilled by the landlord.

58. The tenants are seeking a rent rebate from October to present day, however, their official written request to the landlords was from 05-August-2022 with a completion date of 01-September-2022. Therefore this is the time period that will be considered.
59. The tenants stated that they were unable to use 40% of their apartment, and during August that they were unable to use any of the apartment, this claim is not supported by their evidence. A rent rebate is awarded "based on actual costs incurred- ie. Laundromat services, heat loss due to failure to repair window or door, or loss of use of a portion of the rental unit due to leaky roof, etc." Although they had leaks they provided pictures to show that the repairs had begun. The tenants own evidence supports that the landlords have responded in a timely manner to the written request. Further to this the tenants didn't provide any evidence of actual loss.
60. I do accept that there are necessary repairs required to the apartment, however, the landlord's obligation is to do the work in a reasonable time. Based on landlord2's testimony and the tenants' testimony and evidence of the ongoing text messages, it appears that landlord2 was going above and beyond to accommodate the request for repairs. The request for a rent rebate fails.

Decision

61. The tenants' request for a rent rebate fails.

Issue 3: Compensation for inconvenience \$2,500.00

Tenant's Position

62. The tenant's state that they are seeking \$1,000.00 each for the exposure to mold in the apartment and the potential future health issues.
63. The tenants have had ongoing issues with the landlords' other son, who is tenant1's brother. He came to the house on 16-August-2022 and parked his truck so that it was touching the bumper of tenant2's car, blocking it in, picture provided (TT#05). They asked him to move the truck, he refused and said "call the cops." They called the police and filed for a peace bond. Their hearing date has been held over until 04-October-2022. Tenant1 said that his brother is an agent of the landlord and they want \$500.00 for pain and suffering due to the harassment that they have been subjected to.

Analysis

64. This board doesn't award for the cost of pain and suffering; the tenants' claim fails.

Decision

65. The tenants' claim fails.

Issue 4: Hearing expenses reimbursed \$20.00

66. The tenants' submitted the receipt for \$20.00 for the cost of the hearing (TT#06) and pursuant to policy 12.01, as their claim has been unsuccessful and they are not entitled to reimbursement of that cost from the tenant.

Summary of Decision

67. The termination notices served to the tenants with termination dates of 02-October-2022 and 30-November-2022 are not valid.
68. The financial compensation claims submitted by the tenants fails.

October 3, 2022

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office