

Residential Tenancies Tribunal

Application 2022-0988-NL

Decision 22-0988-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:16 a.m. on 21-February-2023.
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 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 tenant had submitted an affidavit (TT#01) with her application stating that she had served the landlord with notice of the hearing, by prepaid registered mail for an earlier hearing date. The landlord was then served by our Division by prepaid registered mail (TT#02) on 02-February-2020 ([REDACTED]), this package was not retrieved, and a second package was sent 16-February-2023 ([REDACTED]), in accordance with *Residential Tenancies Act, 2018*, Section 35(5) the first package is considered served after 5 days. 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 her absence.

Issues before the Tribunal

5. The tenant is seeking
 - Rent refunded \$1,310.00
 - Hearing expenses reimbursed \$20.00

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 9: Landlord and tenant relationship and Section 10: Statutory Conditions.

Issue 1: Vacant Possession of the Rental Premises

Relevant Submissions

8. The tenant stated that she had entered a verbal monthly agreement with the landlord. Her rent was \$655.00 per month and the rental period was from the first day of the month until the last. The tenant said that the landlord required first and last month's rent up front and that on 06-June-2022 she paid \$1,310, (TT#03) bank receipt provided. The tenant was supposed to take possession of the house on 01-July-2022; she never moved in.
9. The tenant explained that the landlord was going into senior's care and that her friend told her that the house would be available to rent. She was moving from another town with her children for a new job and needed a rental.
10. She said that she entered the rental agreement with the landlord. From 20 – 23 June-2022 she and some of her family were helping the landlord's son clear out the landlord's items from the house.
11. During this time, the tenant believed that the son was using drugs. She said he was pacing, muttering to himself and throwing things. On 23-June-2022 he became very aggressive and almost ran her over with his car. The police were called. Charges were laid against the son and the court case is ongoing. The tenant provided her subpoena to appear (TT#04).
12. The tenant said she was too afraid to move into this house with her children and deal with the landlord's son. The tenant said that the son laughed at her when she asked for the rent back.
13. The tenant then spoke with the landlord and explained what had happened. The landlord refused to believe that her son had acted that way. When the tenant asked for her money back the landlord said "I don't know how you'll get your money back."
14. The tenant never moved into the house. She said she had to have her kids stay with family while she stayed with a friend in the community where her job was. She explained it took months to find a place for her and her children to live.
15. The tenant is seeking reimbursement of the rent, \$1,310.00.

Analysis

16. The verbal agreement with the landlord establishes the landlord tenant relationship. The parties had an agreement that the tenant would take possession of the house in July and she had paid rent for the use and enjoyment of the property, as per Section 9 of the *Residential Tenancies Act, 2018*, below:

17. **Landlord and tenant relationship**

9. (1) A relationship of landlord and tenant takes effect when the tenant is entitled to use or occupy the residential premises whether or not the tenant actually uses or occupies it.

(2) The doctrine of frustration of contract and the *Frustrated Contracts Act* apply to a rental agreement.

(3) A common law rule respecting the effect of the **contravention of a material covenant by a party to a contract on the obligation to perform by the other party applies to a rental agreement.**

(4) Where a relationship of landlord and tenant exists, a covenant concerning a thing related to the residential premises is considered to run with the land whether or not the thing is in existence at the time the relationship commenced.

18. The landlord's son's aggressive and violent behavior is in contravention of Section 10 of the *Residential Tenancies Act, 2018*, as follows:

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.**

19. The landlord's son has been charged with threatening and aggressive behavior towards the tenant, his interference with her peaceful enjoyment is a contravention of a material covenant as shown in Section 9 (3) above. The common law rule states a material breach of contract occurs when one party's failure to abide by a contract's terms renders it irreparably broken and defeats the purpose of entering the contract in the first place. The landlord's son irreparably broke the contract and the tenant is now released from its terms.

20. The tenant was never provided use of the rental due to the fault of the landlord's son irreparably breaking its terms and the landlord shall therefore reimburse the full amount of rent paid by the tenant totaling \$1,310.00.

Decision

21. The tenant's claim for rent refunded succeeds in the amount of \$1,310.00.

Issue 2: Hearing expenses reimbursed \$20.00

22. The tenant submitted the receipt for \$20.00 for the cost of the hearing (LL#05) and pursuant to policy 12.01, as her claim has been successful is entitled to reimbursement of that cost from the landlord.

Summary of Decision

23. The landlord shall pay to the tenant \$1,330.00 for rent and hearing expenses as follows:

- Rent \$1,310.00
- Hearing expenses 20.00
- Total \$1,330.00

February 24, 2023

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office