

Residential Tenancies Tribunal

Applications: 2023 No. 0053 NL
2023 No. 0122 NL

Decision 23-0053-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:12 AM on 09 March 2023 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the tenant", participated in the hearing. Her husband, [REDACTED], briefly joined the hearing to declare that his wife, the tenant will be participating on his behalf. The respondent, [REDACTED], participated on behalf of the property owner [REDACTED], and is hereinafter referred to as "the landlord". An authorized representative form was duly completed and submitted (L#1).
3. The tenant submitted two affidavits of service, one for each landlord, confirming both were served to their individual email addresses [REDACTED] and [REDACTED] as provided on the rental agreement (T#1). Proof of service was provided (T#2) and the landlord confirmed service. The landlord provided her own affidavit of service (L#2) confirming that the tenant was served notice of the counterclaim on 24 February 2023 and proof of service was provided (L#3). After it was noted that the landlord failed to serve the tenant's husband, he briefly joined the teleconference to waive his right to service.
4. The details of the claim were presented as a fixed term six month agreement that started 01 October 2022 and was set to expire 31 March 2023 (T#3). Monthly rent was set at \$1,500.00 POU, due at the first of the month and a security deposit in the amount of \$1,125.00 was collected.
5. In a proceeding under the *Residential Tenancies Act*, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. The standard of proof, in these proceedings, is referred to as the balance of probabilities which means the applicants have to establish that their account of events is more likely than not to have happened.

Issues before the Tribunal

6. The tenant is seeking the return of the \$1,125.00 security deposit.
7. The landlord is seeking the following:
 - Validity of termination notice determined;
 - An order for payment of rent in the amount of \$3,00.00;
 - An order for payment of late fees in the amount of \$75.00;
 - An order for payment of utilities in the amount of \$488.22; and
 - An order to retain the full value of the \$1,125.00 security deposit.

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).
9. Also relevant and considered in this case are sections 10, 14, 15, 18 and 23 of the *Act*.

Preliminary Matters

10. The rental premises is a single family dwelling located at [REDACTED]. Both parties agreed there is a house and a garage located at [REDACTED] and that the tenants only had access to the house. Both parties also agreed that a separate individual, hereinafter referred to as “the neighbour” had exclusive rights to the garage. Lastly, both parties agreed that [REDACTED] is a vacant lot that otherwise appears to be part of [REDACTED].
11. The landlord amended her claim for payment of rent by increasing it to \$6,000.00 since she is seeking payment of \$1,500.00 for the four months between December 2022 and March 2023 (the end of the lease). The landlord also amended her claim for payment of utilities up to \$1,200.00 to represent costs of utilities at the rental premises between December 2022 and March 2023.

Issue 1: Validity of Termination Notice Determined

Landlord's Position

12. The landlord referred to screenshots submitted of text conversations with the tenant (L#4). She testified that the tenant sent written reasons for terminating the rental agreement on 26 November 2022, along with a screenshot of the termination notice issued (L#5). This notice was issued under section 23 of the *Act* for interference with the tenant's peaceful enjoyment of the rental premises as a result of the neighbour and other persons being present at the premises. The landlord referred to her text message where she wrote later that same day, that she “*can solve these problems immediately*”.

13. The landlord testified that the tenant knew full well that the neighbour would be using the garage at the rental premises. She also testified that the neighbour is a generally helpful person, and so anytime he would have been on the premises, he was likely assisting with chores. The landlord testified further, that the neighbour stopped coming to premises after she asked to refrain from doing so in mid October 2022. In response to an earlier concern of the tenant with someone parking at the rental premises, the landlord testified that she promptly addressed the tenant's concerns.

Tenant's Position

14. The tenant testified that she issued the termination notice because she was paying a large amount of rent each month but not getting peaceful enjoyment or privacy at the rental premises. Specific to the question of the neighbour, the tenant testified that she understood that he would ONLY be on the premises to work on a truck stored in the garage. The tenant found it problematic that the neighbour was often at the premises at various hours during the day and there was actually no truck in the garage. She also testified that her husband had words with this neighbour, and that she gave advance notice of her concerns with this neighbour to the landlord. The tenant testified that she only vacated after she found no relief from the situation with the neighbour and other residents of the community.
15. The tenant referred to her text messages with the landlord (T#4) to support her timeline of events. She testified that she was really frustrated with the neighbour using electricity in the garage because she realized after the fact, that the garage was attached to her account for the house. The tenant referred to a picture of a light on the garage (T#5) that she said was a disturbance, and testified that things started poorly when someone she did not know, parked in her driveway. The tenant denied that the landlord did anything to have the neighbour stop attending to the rental premises prior to her issuing the termination notice.

Analysis

16. To issue a termination notice under section 23 of the *Act*, Interference with Peaceful Enjoyment and Reasonable Privacy, a tenant must be able to establish, on the balance of probabilities, that there was cause for issuance of a short notice (e.g., not less than 5 days). This means that they must successfully establish how the landlord contravened statutory condition 7(b) (section 10(1) of the *Act*) and unreasonably interfered with the rights and reasonable privacy of the tenant in the residential premises, a common area or the property of which they form a part.
17. According to Residential Tenancies Policy 07-005, Interference with Peaceful Enjoyment and Reasonable Privacy, interference is defined as an ongoing unreasonable disturbance or activity, outside of normal everyday living, caused by the landlord or the tenant or someone permitted on the premises by the landlord or the tenant. This includes any unreasonable disturbance that interferes

with right of the tenant to otherwise enjoy the property. The policy further identifies that unreasonable disturbances interfering with peaceful enjoyment and reasonable privacy may include, but is not limited to the following: (i) excessive noise; (ii) aggressive or obnoxious behaviour; or (iii) threats and harassment.

18. Specific to this dispute, I accept that both parties agreed that the tenant knowingly rented the premises with an understanding that rights to the garage were owned by the neighbour. Where the tenant argued that her right to peaceful enjoyment and privacy was repeatedly interfered with as a result of the neighbour, I find that she failed to establish on the balance of probabilities that his actions represented anything other than regularly everyday activities. Furthermore, I find that the landlord was responsive and considerate of the tenants concerns when raised, and note that the landlord even restricted the neighbours access to the property. Consequently, I find that the tenant was not justified when she issued the section 23 Termination notice on 26 November 2022 (dated 21 November 2022) which means that this notice was not valid.

Decision

19. The termination notice served to the landlord on 26 November 2022 was not a valid termination notice.

Issue 2: Payment of Rent (\$6,000.00)

Landlord's Position

20. The landlord testified that she is seeking payment of rent in the amount of \$\$6,000.00 because as shown in the table below, this is money she could have otherwise expected to receive from the tenants for the remainder of the fixed term rental agreement.

Remaining on Lease	Rent Owning
December 2022	\$1,500.00
January 2023	\$1,500.00
February 2023	\$1,500.00
March 2023	\$1,500.00
	\$6,000.00

21. The landlord submitted proof of her advertisement for the rental premises (L#6) and testified that she has been attempting to rent it since shortly after the tenants vacated on 03 December 2022. She testified however, that she has not been successful because those interested want to rent it for a longer period than it is available (e.g., only to 31 March 2023). The landlord testified that the premises were rented for six months because this coincides with the period of time that the property owner is out of the country.

Tenant's Position

22. The tenant testified that it was ridiculous for the landlord to claim rent because she gave notice of termination that was accepted by the landlord. The tenant also testified that the six month rental term had been ideal because her family is building their own place nearby.

Analysis

23. The landlord is responsible for establishing the rate of rent and the tenant's history with payment rent. Based on my review of the evidence and testimony submitted, I accept that the tenant did not issue a valid termination notice and vacated the rental premises prior to the end of the fixed term lease. Regarding the landlord's responsibility to mitigate loss from this early termination, I accept that she advertised and that it is not her fault that no one wanted to rent for the time remaining on the original six month agreement only. I therefore find that the landlord is entitled to payment of rent in the amount claimed of \$6000.00 as she could have otherwise expected the tenants to pay this money in rent over the duration of the fixed term agreement.

Decision

24. The landlord's claim for rent succeeds in the amount of \$6,000.00.

Issue 3: Payment of Late Fees (\$75.00)

Relevant Submissions

25. The landlord has assessed late fees in the amount of \$75.00 because the tenant has not paid rent since 02 December 2022. The tenant testified that late fees are not required because she does not owe rent as a result of issuing the termination notice.

Analysis

26. 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.

27. 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.

28. Because there have been arrears on the tenant's account since at least 02 December 2022, I find that the landlord is entitled to payment of the maximum fee of \$75.00 as set by the minister.

Decision

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

Issue 4: Payment of Utilities (\$1200.00)

Landlord's Position

30. The landlord testified that she is claiming \$200.00 a month for covering the costs of oil required to heat in the rental premises at 15 degrees Celsius while it sits vacant. This means that she is claiming \$800.00 as a conservative estimate for costs of oil that would have otherwise been paid by the tenant.
31. The landlord testified that she is also seeking a payment of \$75.00 for each of those same 4 months for electricity. However, the landlord did not submit any evidence from NF Power to support this claim and she also acknowledged that the house and the garage are on the same electric account.

Tenant's Position

32. The tenant testified that she should not be required to pay utilities.

Analysis

33. I accept that the parties agreed that the rental premises are heated by oil and that utilities were the tenants' responsibility during the rental agreement. Consequently, I accept that the landlord has a valid claim for payment of oil costs for the remainder of the rental term because heat must be on during the winter months. Given that current costs of furnace oil, I find that the nominal fee requested by the landlord of \$200.00 a month between December 2022 and March 2023 to be reasonable. I therefore find that the tenant shall pay to the landlord \$800.00 as total payment for utilities.

34. Regarding the landlord's claim for payment of electricity for the remainder of the rental term, no verifiable information was submitted about costs incurred and the landlord also acknowledged that the tenant had paid for the neighbours electricity use in the garage during their time in the rental premises. Consequently, I find that the landlord failed to establish on the balance of probabilities that she was entitled to this claim.

Decision

35. The landlord's claim for payment of utilities succeeds in the amount of \$800.00.

Issue 5: Hearing Expenses

36. The landlord claimed the \$20.00 expense of applying for this hearing. As her claim has been successful the tenant shall pay this expense.

Issue 6: Security Deposit \$1125.00 Relevant Submissions

37. The parties agreed that a security deposit in the amount of \$1,125.00 was collected. The tenant requested that the full value be returned and the landlord requested to retain the full value against monies owed.

Analysis

38. Section 14, sub 10, 12 and 14 of the *Residential Tenancies Act, 2018* states:

(10) Where a landlord believes he or she has a claim for all or part of the security deposit,

(a) the landlord and tenant may enter into a written agreement on the disposition of the security deposit; or

(b) the landlord or the tenant may apply to the director under section 42 to determine the disposition of the security deposit.

(12) A landlord who does not make an application in accordance with subsection

(11) shall return the security deposit to the tenant.

(14) Where a landlord does not make an application under subsection (11), he or she is not prohibited from making an application under section

42 other than an application with respect to a claim against the security deposit.

39. As the amount owing to the landlord for rent, late fees and utilities is in excess of the security deposit collected, I find that the landlord is entitled to retain the full amount of the \$1125.00 security deposit.

Decision

40. The landlord shall retain the full value of the \$1125.00 security deposit.

Summary of Decision

41. The termination notice served to the landlords on 26 November 2022 was not a valid termination notice.
42. The landlord shall retain the full value of the \$1,125.00 security deposit.
43. The tenants shall pay to the landlord, the amount of \$5,770.00 determined as follows:

a) Rent.....	\$6,000.00
b) Late Fees.....	\$75.00
c) Utilities.....	\$800.00
d) Hearing Expenses	\$20.00
e) Less Security Deposit	\$1,125.00
f) Total.....	<u>\$5,770.00</u>

16 March 2023

Date



Jaclyn Casler
Residential Tenancies Tribunal