

Residential Tenancies Tribunal

Application 2023-0218-NL

Decision 23-0218-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:03 a.m. on 08-May-2023.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
4. The landlord submitted an authorized representative form (LL#01), naming [REDACTED] as her representative, she attended the teleconference and will hereinafter be referred to as, the “authorized representative.”

Preliminary Matters

5. The tenant amended her application to remove validity of termination, she has already vacated the premises.

Issues before the Tribunal

6. The tenant is seeking
 - Rent refunded \$1,000.00
 - Compensation for inconvenience \$1,750.00

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 23: Notice where landlord contravenes peaceful enjoyment and reasonable privacy, and Section 24: Notice where tenant contravenes peaceful enjoyment and reasonable privacy.

Issue 1: Rent refunded \$1,000.00

Issue 2: Compensation for inconvenience \$1,750.00

Tenant's Position

9. The tenant submitted the rental agreement held with the landlord (TT#02). She rented a room in the downstairs of a house, beginning 30-December-2022. There were other tenants renting rooms on the upstairs level and the tenant had a room on the downstairs level; the landlord also had a room on the downstairs level. They shared the kitchen, living room and bathroom areas. She paid \$500.00 a month rent which includes utilities. Her rental period was from the 30th day of each month until the 29th day of the next month. She paid a security deposit of \$250.00 when she first took occupancy, this has been returned to her. She moved out on 24-April-2023.
10. The tenant is seeking compensation for the conditions she claims that she endured while living at this address. She provided an itemized list of inconveniences (TT#03) and the following compensation worksheet (TT#04):

Description of Inconveniences	Compensation Claimed
Violation of privacy	\$500.00
Harassment	\$1,000.00
Mouse Infestation	\$500.00
Eviction threats with no legal backing	\$750.00
Smoking and second hand smoke exposure	

11. The tenant explained that while she lived at the premises there were video cameras throughout the house. She said that initially there were 2 cameras and then after she moved in this increased to 4. There were 2 in the living room, 1 in the kitchen and 1 in the basement area where she lives.
12. When she moved in, the understanding she had was that the cameras were there in case something illegal happened; her experience however, was that the landlord was using the cameras to watch her and correct her on her behavior.
13. The tenant said that the landlord would text her and tell her to take her coat off the table, or question why she left the light on in her room, or to tell her to take her books off the table that she is to study in her room. She later found out that when she moved about the house the landlord would get an alert on her phone and then she would text the tenant if she was breaking "house rules."
14. She said that she is a student and that she asked the landlord just tell her about any issues when they saw each other and to not interrupt her while she is in class unless it is important. She said that the landlord then started contacting her brother to report issues with her.
15. The tenant continued, that didn't realize she was also being audio taped. When the landlord went on vacation, she found out that the landlord was listening in on what was being said in the house.

16. In addition to the videotaping, the tenant found that she was being verbally assaulted by the landlord. The landlord told her that she smelled and would tell her to clean her room. The landlord's husband became very aggressive with her and she feared he would hit her. She said that the landlord intervened during that incident and prevented her from being physically attacked.
17. She also had an issue with mice. She had seen a mouse in her room and told the landlord. She said that the landlord had told her at the time that they were going on vacation and that she couldn't deal with it. She said they gave her a mouse trap. She then saw another mouse. No one ever came to exterminate the mice.
18. The tenant said that there wasn't supposed to be any smoking in the house, but the landlord's husband would smoke.
19. The tenant stated that the landlord had given her four separate termination notices during the four months she lived there.
20. She explained that she tried to tell the landlord how she felt about how she was being treated, but was told if she didn't like it there she could leave. She agreed that the landlord offered her a room upstairs but she wanted more money for rent.
21. The tenant said that after the landlord returned from vacation, she was standing outside her door talking about the crazy people living there, she explained she couldn't take it anymore and then she moved out.
22. The tenant is seeking her rent returned and compensation for pain and suffering for the living conditions she endured.

Landlord's Position

23. The landlord confirmed the details of the rental agreement and that she had paid the tenant back her security deposit.
24. The authorized representative explained that the landlord didn't understand how to use the computer and she gave the tenant notices that weren't valid, because she just made her own notices.
25. The landlord said that she had to increase the number of cameras because the tenant left the stove on one time. The authorized representative said that they believe it is okay to have cameras in their own home in the common areas.
26. The landlord explained that she did give the first notice (TT#06) because she lived on the same floor as the tenant and she didn't like her smell. She points out that she also gave an option for a 3 month notice and the tenant could have moved into an empty room upstairs. The authorized representative said that she believes that the 2 week notice should be valid because the landlord's peaceful enjoyment was impacting by the tenant's smell.
27. The landlord explained that when the tenant had the issue with the mice, she was leaving for a trip. Her son was going to be taking care of the house so he was going to take care of the issue with the mice. She said that the tenant's brother had told her the tenant had mental health issues, so she told the tenant's brother he should watch her because her son would be living on the same floor as his sister.

28. The authorized representative said that the landlord may have misunderstood about the mental health issues. She explained that the tenant's brother had sent a text saying that they were causing the tenant too much stress and it was impacting her mental health, he never said she had mental health issues.
29. The authorized representative said that the landlord had to call the tenant's brother because if you look at the screenshots (TT#05) of the text messages, the tenant wouldn't respond to the landlord.

Analysis

30. I first find it necessary to address the harassment and complete disregard for the tenant's privacy that the landlord displayed. A landlord is not permitted to video tape a tenant to impose their rules during the tenant's residency. The tenant pays for use and enjoyment of their rental area. Utilities are included in the rent and use of the common area is part of what the tenant pays for under the terms of the rental agreement. The landlord should not be watching the tenant's every move and harassing the tenant while she is in class or calling her brother to discuss issues she is having with the tenant, Section 10 of the *Residential Tenancies Act, 2018* is 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 -

....

*(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.*

31. Additionally, the issue of audio recording individuals in the common areas. In accordance with section 184 of the Criminal Code, we follow the one-party consent rule. This means that recording private conversations is legal provided one of the participants consents to the recording. Therefore, it is not legal or acceptable for the landlord to record the tenant's private conversations while she is away on vacation and not a participant in the conversation.
32. It became apparent that the tenant is justified in her feelings that she was not treated fairly by the landlord. That being said, the compensation sought by the tenant is for pain and suffering. This board does not award compensation for pain and suffering. The tenant's claim for rent returned due to mistreatment and compensation for pain and suffering fails.

Decision

33. The tenant's claim for compensation fails.

Issue 4: Hearing expenses reimbursed \$20.00


34. The tenant submitted the receipt for \$20.00 for the cost of the hearing (TT#07) and pursuant to policy 12.01, as her claim was not successful she is not entitled to reimbursement of that cost from the landlord.

Summary of Decision

35. The tenant's claim for compensation fails.

May 9, 2023

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office