

Residential Tenancies Tribunal

Application 2023 No. 433NL

Decision 22-0433-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:34 AM on 27 June 2023 via teleconference.
2. The applicant [REDACTED] hereinafter referred to as “the tenant”, participated in the hearing. The respondent, [REDACTED] hereinafter referred to as “the landlord”, was also in attendance.

Issues before the Tribunal

3. The tenant is seeking the following:
 - A determination of the validity of a termination notice issued to her on 28 April 2023,
 - An order for a refund of a \$600.00 security deposit, and
 - An order for a refund of rent in the amount of \$800.00.

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this case are sections 10, 14, 18, and 24 of the *Residential Tenancies Act, 2018*.

Issue 1: Validity of Termination Notice

Relevant Submissions

The Landlord's Position

6. With her application, the tenant had submitted a copy of a rental agreement stating that this tenancy commenced on 01 February 2023. The agreed rent was set at \$800.00 per month and the landlord testified that the tenant had paid a \$600.00 security deposit.
7. With her application, the tenant had submitted several termination notices. One of those notices was issued under section 18 of the *Residential Tenancies Act, 2018*, and it had an effective termination date of 31 May 2023. The landlord testified that she had personally delivered that notice to the tenant on 15 February 2023.
8. On 28 April 2023, the landlord issued the tenant another termination notice, this time via text-message. This second notice was issued under section 24 of the *Residential Tenancies Act, 2018* (notice where tenant contravenes peaceful enjoyment and reasonable privacy), and it had an effective termination date of 07 May 2023.
9. The landlord stated that she owns several other properties that are situated next to the tenant's, and she stated that she had been receiving complaints from all of the residents at these units about the tenant's behaviour. She claimed that several of these residents are "besides themselves" and have informed her that they are going to move out because of the disturbances in the neighbourhood since the tenant had moved in. She claimed that there has been frequent fighting and arguing in the tenant's unit and that she is also fighting with and harassing these residents. The landlord also claimed that the tenant has to appear in court on 05 July 2023 as one of these residents has requested a peace bond.

The Tenant's Position

10. The tenant questioned the validity of the termination issued to her on 28 April 2023.
11. The tenant claimed she was not responsible for the disturbances taking place in her neighbourhood, and she put the blame on these other residents. She complained the resident who has a unit bordering her backyard is a violent person, and she has pressed charges against him as he assaulted her and had unlawfully entered her property. She also testified that a different resident had tried to run her down with a car.
12. The tenant claimed that she is quiet and that she stays inside most times, and only comes outside to walk her cat.

13. Regarding the peace bond application, the tenant denied that she was scheduled for any hearing on 05 July 2023. She did acknowledge that she did make an appearance in court for a previous peace bond application from one of her neighbours, but she pointed out that that application was unsuccessful.

Analysis

14. Statutory conditions 7, set out in section 10 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.

and according to section 24:

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.

15. In a case where a landlord gives a termination notice for cause, the burden of proof falls to that landlord to establish, on the balance of probabilities, that she was justified in issuing the notice. For this particular sort of notice then, the landlord would have to present compelling evidence establishing, on the one hand, that the tenant had been acting unreasonably, and, on the other, that that unreasonable behaviour had interfered with the quiet and peaceful enjoyment, in this case, of the other residents who were living next to her.
16. The landlord claimed that the tenant had been fighting and harassing those other residents living around her, but each of those claims was denied by the tenant, and she claimed that the harassment actually was aimed at her. But besides the landlord's testimony, the landlord presented no other evidence to establish her complaints. These other residents were not called as witnesses and no communications, letters or affidavits from them were submitted at the hearing. The landlord claimed that she was in possession of video evidence, but again, that video was not submitted as evidence.
17. Based on this paucity of evidence, I have to conclude that the landlord has failed to meet her burden of proof. For that reason, I conclude that the termination notice issued to the tenant on 28 April 2023 is not valid.

Decision

18. The termination notice issued to the tenant on 28 April 2023 is invalid.

Issue 2: Refund of Security Deposit - \$600.00

Relevant Submissions

The Tenant's Position

19. The tenant is seeking an order for a refund of the \$600.00 security deposit she had paid to the landlord at the beginning of this tenancy.

The Landlord's Position

20. The landlord stated that she believed that she could hold the deposit for 10 days after the tenant moved out while she made an assessment of damages. She stated that if there are no damages at the unit, she will return the full deposit to the tenant.

Analysis

21. Security deposits are addressed in section 14 of the *Residential Tenancies Act, 2018*, and the relevant subsection states:

Security deposit

14. (9) Not later than 10 days after the tenant vacates the residential premises, the landlord shall return the security deposit to the tenant unless the landlord has a claim for all or part of the security deposit.

22. I agree, then, with the landlord in this matter. As this tenant has not yet turned over vacant possession of the unit to the landlord, she is permitted to continue to hold that deposit up to 10 days after she moves out.

Decision

23. The tenant's claim for a refund of the security deposit does not succeed.

Issue 3: Refund of Rent - \$800.00

Relevant Submissions

The Tenant's Position

24. The tenant stated that her rent is being paid to the landlord, on her behalf, by a governmental agency. She stated that if that rent is paid to the landlord for the month of July 2023, she would want it returned to her.

The Landlord's Position

25. The landlord stated that if the tenant moves out before 01 July 2023, she would return any rent paid to her for that month.

Analysis

26. No evidence was presented by the tenant to establish that there had been any overpayment of rent to the landlord or to establish that she had already received the rent for July 2023.
27. Given that this hearing took place on 27 June 2023, 4 days before July's rent is due to be paid, I find that this portion of the tenant's application has been filed prematurely.

Decision

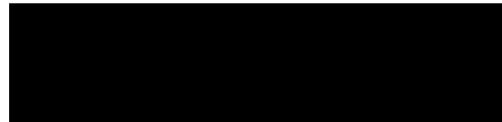
28. The tenant's claim for a refund of rent does not succeed.

Summary of Decision

- 29. The termination notice issued to the tenant on 28 April 2023 is not valid.
- 30. The tenant's claim for refund of the security deposit does not succeed.
- 31. The tenant's claim for a refund of rent does not succeed.

30 June 2023

Date



Residential Tenancies Tribunal