

Residential Tenancies Tribunal

Application 2023-0824-NL

Decision 23-0824-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:02 a.m. on 12-October-2023.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.
3. The respondent, [REDACTED], herein referred to as “the landlord” attended by teleconference.

Preliminary Matters

4. The tenant submitted an affidavit with her application stating that she had served the landlord with the notice of hearing electronically by email to; [REDACTED] on 25-September-2023 (TT#1). The landlord confirmed receiving the document. In accordance with the *Residential Tenancies Act, 2018* this is good service.
5. There was a written fixed rental agreement which commenced on 1-March-2023. The tenant vacated the premises on 13-September-2023 at 17:48. Rent was \$1000.00 per month due on the first of each month. A security deposit of \$500.00 was paid on 12-February-2023 and is still in the possession of the landlord (TT#2).

Issues before the Tribunal

6. The tenant is seeking:
 - a. Validity of termination notice
 - b. Refund of rent \$500.00
 - c. Other \$1809.67
 - d. Refund of Security Deposit \$500.00

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 14: Security deposit, and Section 22: Notice where tenant's obligation is not met.

Issue # 1: Validity of Termination Notice

Relevant Submission

9. The tenant submitted a copy of the second termination notice received from the landlord dated 11-September-2023 to vacate the premises on 16-September-2023 under Section 22 of the Act (TT#3).

Tenant's Position

10. The tenant stated that she received a second termination notice from the landlord on 11-September 2023 with a 5-day notice to vacate the premises on 16-September-2023. The tenant stated that she received this second notice shortly after she served the landlord with the initial notice of hearing document on 11-September-2023. The tenant stated that she had full intentions of remaining in the unit until her hearing date so she could prove invalidity of the termination notice, however she was forced to vacate within 48 hours of serving the landlord. The tenant is questioning the validity of the second notice and stated that she would have stayed until the hearing date, but the actions of the landlord forced her to vacate the unit on 13-September-2023.

Landlord's Position

11. The landlord testified that he had grounds to give the termination notice under Section 22 of the *Act* as the tenant did not comply with his request to clean up after her dog in the yard. The landlord submitted a photograph to show dog feces in the yard stamp dated for 29-August-2023 and 1-September-2023 (LL#1).

Analysis

12. The relevant subsections of Section 22 of the *Residential Tenancies Act, 2018* states:

Notice where tenant's obligation not met

22. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes statutory condition 2 set out in subsection 10(1), the landlord may give the tenant notice requiring the tenant to comply with the condition.

(2) Where a tenant contravenes statutory condition 2 set out in subsection 10(1) within 3 days after the notice under subsection (1) has been served or within a reasonable time, 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.

13. The termination notice was given on 11-September-2023 to vacate the premises on 16-September-2023 which does not meet the timeline of *not less than 5 days* after the notice has been served as per Section 22 (1)(2) stated above.
14. I find that the termination notice does not meet the timeline as set out in the *Act* and as such is not a valid notice.

15. I find that the reasons as to why the termination notice was given under Section 22 will not be analyzed in this section of the decision as it is not necessary once invalidity has been determined (paragraph 14).

Decision

16. The tenant's request for a determination of the validity of the termination notice is that the notice is not a valid notice.

Item # 2: Refund of Rent \$500.00

Tenant's Position

17. The tenant is seeking a refund of rent for the second half of the month of September 2023 in the amount of \$500.00 as she was asked to vacate the premises by 16-Sepember-2023. The tenant testified that she was forced to vacate a few days earlier on 13-September due to the behavior of the landlord which left her feeling unsafe within the unit. The tenant is seeking a refund of rent for the period of September 14th-30th in the amount of \$500.00.

Landlord's Position

18. The landlord does not dispute that the tenant paid rent in full for the month of September. The landlord does however dispute doing anything to make the tenant feel unsafe within the unit. The landlord stated that the tenant did not give proper notice that she was going to leave earlier than the date of 16-September as indicated on the termination notice.

Analysis

19. The tenant was asked to vacate the premises on the 16-September-2023 as per the second termination notice given by the landlord on 11-September-2023. The tenant is not expected to pay rent past that date, however the tenant felt that she had to vacate earlier than that date and as such, she stated that she should not be responsible for rent from September 14th-30th. The tenant testified that she felt unsafe in her unit due to the behavior of the landlord. The tenant submitted photographs and video surveillance to support her claim that she had no choice but to vacate the premises immediately as she was feeling very uncomfortable and unsafe in her unit.
20. I accept the tenant's testimony that the landlord wanted her out of the unit and based on the photographs and video surveillance entered into evidence, I agree with the tenant that she was forced to vacate the premises without having a chance to attend the hearing and question the validity of the termination notice. The landlord made loud banging noises and played loud music on the same day as he was served the document with the notice of hearing (exhibits 4-6). The landlord covered the front of the tenant's cameras with a black shield to prevent her from videotaping the outside of the residence (exhibits 11-15) and he sent her a written notice to have the cameras removed from the premises within 48 hours (exhibit 9). The landlord called the RNC asking to have the tenant fined for parking violations (exhibits 17-19).
21. I find that based on the behavior of the landlord on the 11-September after he was served with the hearing date, the tenant was forced to vacate her unit early on 13-

September-2023 and as such is not responsible for rent for the period of September 14th-30th.

22. A daily rate of rent has been calculated as follows: $\$1000 \times 12 \text{ months} = \$12000 \text{ per year} / 365 \text{ days} = \32.88 per day . I find that the tenant is not responsible for rent for the last 17 days of the month (September 14-30) which equates to a rental amount of \$558.96. With that said, I do not have the authority to award any amounts greater than what the applicant is seeking in her application to *Residential Tenancies*. The tenant is seeking a refund of rent in the amount of \$500.00.
23. I find that the landlord is responsible to reimburse the tenant rent in the amount of \$500.00 for the period of September 14th-30th.

Decision

24. The tenant's claim for refund of rent succeeds in the amount of \$500.00.

Item # 3: Other \$1809.67

Relevant Submission

25. Th tenant is seeking additional compensation in the amount of \$1809.67 for the following items:

Item # 1: Moving expenses - \$858.47
Item # 2: Lost wages - \$931.20
Item # 3: Hearing expenses - \$20.00

Tenant's Position

26. The tenant stated that she was forced to move out of her unit due to the behavior of the landlord and as a result she endured unexpected moving costs which ranged from renting a storage unit, purchasing uhaul supplies to hiring professional movers. The tenant testified that the total unexpected cost was \$858.47 and she submitted receipts to support her claims (TT#4).
27. The tenant also testified that she lost 3 days wages due to having to move all of a sudden and she is claiming \$931.20 for the lost time at work. The tenant submitted a copy of her pay stub and leave requests to support the amount she is claiming (TT#5).
28. The tenant is also seeking reimbursement of hearing expenses in the amount of \$20.00 to cover the application fee (TT#6).

Landlord's Position

29. The landlord stated that he had reason to give the termination notice under Section 22 of the *Act* and the tenant decided to leave 3 days earlier. The landlord stated that he is not responsible for her moving expenses or her lost wages due to moving.

Analysis

30. I accept that the tenant had planned to stay in the unit until her hearing date when she would have received a ruling on the validity of the termination notice and it was her right

to do so. I accept that on 11-September-2023 when the landlord was served with the notice of hearing that he became agitated that the tenant may potentially prolong her tenancy. I accept that the behavior of the landlord on and around 11-September-2023 was not acceptable behavior and not only interfered with the peaceful enjoyment of the tenant but also scared the tenant to the point where she had to vacate the premises immediately. The tenant testified that she temporarily moved in with a friend and had no place to put her belongings and had nobody available to help her move. The tenant testified that she had no choice but avail of a moving companies services and have her personal belongings stored in a storage unit until she found a new apartment.

31. With regards to the moving expenses that the tenant incurred due to her need to vacate the premises immediately, I find that the landlord is responsible to reimburse her for those expenses. The tenant had a right to stay in the unit and have her case heard at *Residential Tenancies*. The landlord's behavior was unacceptable and intimidating.
32. I find that the landlord is responsible for the tenant's moving expenses in the amount of \$858.47.
33. With regards to lost wages, this tribunal does not award for pain and suffering and as such the landlord is not responsible to reimburse the tenant for lost wages.
34. With regards to hearing expenses, I find that as the tenant has been successful in her claim for refund of rent (paragraph 24) and moving expenses (paragraph 32), the landlord shall reimburse the tenant for her hearing expenses.

Decision

35. The tenant's claim for "Other" succeeds in the amount of \$878.47.

Item # 3: Refund of Security Deposit \$500.00

Analysis

36. Section 14 of the *Residential Tenancies Act*, 2018 states:

Security deposit

14. (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.*
37. I find that the landlord did not return the security deposit within the 10 day timeframe as set out in Section 14 stated above. Also, the landlord did not make an application to *Residential Tenancies* to retain the security deposit, therefore I find that the landlord shall refund the security deposit to the tenant in the amount of \$500.00

Decision

38. The tenant's claim for refund of security deposit succeeds.

Summary of Decision

39. The tenant's request for a determination of the validity of the termination notice is that the notice is not a valid notice.

40. The landlord shall pay the tenant \$1878.47 as follows:

Refund of rent	\$500.00
Other	878.47
Refund of security deposit	500.00
Total.....	<u>\$1878.47</u>

October 30, 2023

Date

Pamela Pennell
Residential Tenancies Office