

Residential Tenancies Tribunal

Application 2024-0155-NL

Decision 24-0155-00

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 22-March-2024 at 1:44 pm.
2. The applicant, [REDACTED] hereinafter referred to as the tenant, appeared via teleconference.
3. The respondent, [REDACTED] hereinafter referred to as the landlord, was represented at the hearing by [REDACTED] who appeared via teleconference.
4. The landlord called two witnesses, both of whom appeared by teleconference. The first of these witnesses was [REDACTED] who attended the property in response to a request for maintenance. The second was [REDACTED] the owner of the property.

Issues before the Tribunal

5. Is the termination notice dated 22-February-2024 valid?
6. Should the tenant's application for an order for repairs to be completed be granted?
7. If so, should the tenant's application for a rent reduction and/or rent to be paid in trust to the director until repairs are completed be granted?

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*).

Issue 1: Validity

9. The landlord acknowledged at the hearing that the termination notice (T#1) dated 22-February-2024 was not valid and that they did not intend to seek to enforce it. Even had they not, the termination notice was issued under section 20(2), and the landlord's testimony was that it was not preceded by a written notice of contravention. The written

notice is required under section 20(2) of the Act and its absence is sufficient to invalidate the notice.

Issue 2: Request for Repairs

Tenant's Position

10. The tenant submitted that the landlord has failed to meet their obligations in maintaining, in a good state of repair, the thermostats in the rental premises. Three thermostats were specified as needing repair. The tenant testified that his children expressed that they were cold when they stayed with him and that his priority is ensuring they are well cared for. He submitted T#2, a tenant's request for repairs he had served upon the landlord, and T#3, a spreadsheet documenting discrepancies he had measured between the temperatures to which the thermostats were set and the temperature he measured with his own handheld device.

Landlord's Position

11. The landlord submitted that the thermostats were in working order. They argued that analog thermostats are not necessarily precise and there may be small differences between the temperatures measured and those reading on the thermostats, but that this is a normal part of their functioning. They argue that the tenant's request for repairs is effectively a demand that they install digital thermostats, which they are under no legal obligation to do.

Analysis

12. I have analyzed T#3 in some detail. The tenant testified that he and his father measured the temperature in each room with a handheld thermometer as well as the number to which the thermostat was set each day of the week for the weeks of January 22nd to the 28th, February 5th to the 11th, and February 19th to the 25th. All measurements are in Celsius. The set of measurements for the tertiary bedroom show consistency. Each day, the thermostat is set at 20, and the measured temperature is 17 each day except for all three Fridays, for which the measurement is at 16. Another bedroom is set for 22 for the first two time periods and the measurements range from 17-19. More specifically the first time period has a mean temperature of 18 degrees, and the second time period averages ~17.6. For the third period the temperature was set 3 degrees higher at 25, and the average temperature measured is once again ~17.6. In the main bedroom, the temperature was set to 25 for the first two time periods, and averages ~18.1. In the second time period, the setting and the average measurement are identical to the first. For the third measurement, the tenant has increased the temperature set by 3 degrees to 28, and the average temperature is unchanged.
13. Data was provided for the temperature and thermostats for two other rooms in the premises. These were not included in the tenant's request for repairs, presumably as the bedrooms were of higher import to the tenant and his children. He did not suggest that these thermostats were in working order. They show that the living room was set to 23 for the first two times periods and the measurements ranged from 15-20, with an average of ~16.9 for the first time period and an average of 18 for the second time

period. For the third time period the temperature was set to 25, two degrees higher, and the average is again 18.

14. The laundry room data set varies in set temperature. On 22-January-2024 the set temperature was 30, and the measurement was 21. On Tuesday and Wednesday the temperature was set at 25 and the measurements were 19 and 18 respectively. On Thursday and Friday the temperature was set to 25 and the measurement read as 17. On Saturday and Sunday the temperature was set to 25 and the measurements were again 17 degrees. On the Monday of 5-February-2024 the set temperature was 30 degrees, and the measured temperature was 21. During the rest of the week the temperature was set to 25 and measured 19 degrees for Tuesday-Friday, and 18 degrees for Saturday and Sunday. For the final week, the laundry room was again set to 30 degrees on the Monday of 19-February-2024 and 25 for the rest of the week. The temperatures measured 21 on Monday, 19 from Tuesday to Friday, and 18 on Saturday and Sunday.
15. The landlord's first witness testified that when he appeared at the home multiple thermostats were turned off. He said there were no other issues with the thermostats that he observed. The tenant had a significantly different recollection of this event.
16. The tenant testified that his father, who is trained as an electrician, examined the thermostats and found them to be broken. The landlord testified that an electrician they hired visited the property and reported no problems with the thermostats. Both of these pieces of evidence are hearsay and I accordingly afford them low weight in my overall consideration.
17. When is an analog thermostat in need of repair? I agree with the landlord's submissions that a mere discrepancy between the number to which the temperature is set and the measured temperature is not sufficient. Analog thermostats are not precision measurement tools. Rather, the device's ability to accomplish its purpose must be impaired in a more than trivial way. There are two ways this might be demonstrated, aside from directly observable physical defects which are not at issue here. I would find the thermostats to need repair if:
 - I. The temperature is not being affected by the thermostat, i.e., higher settings do not correlate with higher temperatures, or;
 - II. The tenant is unable to maintain a normal indoor temperature range.
18. In the present case it is difficult to say whether or not the measured temperatures correlate with the set temperatures. The data does show that increasing the temperature setting leads to an increased reading some of the time, but not always. There are two cases where the set temperature of a room is increased but the average measured temperature does not rise. The difference is small, however, and I find it at least as likely that this was caused by other factors such as differences in measuring technique, timing, outdoor weather, etc. Many factors are at play.
19. By the tenant's own evidence, the temperature range maintained is in the range of 15 to 20, heavily weighted towards the middle of the range. This is a normal indoor temperature.

20. The onus is on the tenant as applicant to demonstrate on a balance of probabilities that the repairs are necessary. After reviewing all the evidence in its totality, I find that the tenant has not met this burden.

Issue 3: Rent Reduction/Rent in Trust

21. As I have found that the tenant's request for an order of repairs fails, I need not consider this issue.

Decision

22. The termination notice dated 22-February-2024 is invalid.
23. The tenant's application for an order for repairs is denied.

10-April-2024

Date

[Redacted]
Seren Cahill
Residential Tenancies Office