

Residential Tenancies Tribunal

Application 2024-0628-NL & 2024-0629-NL

Michael Reddy
Adjudicator

Introduction

1. Hearing was heard on 23 July 2024 via teleconference. The hearing was to adjudicate two separate applications: 2024-0628-NL and 2024-0629-NL.
2. [REDACTED], hereinafter referred to as “the tenant”, attended the hearing.
3. [REDACTED], hereinafter referred to as “the landlord”, attended the hearing. [REDACTED] did not attend the hearing. The landlord called two witnesses, [REDACTED], hereinafter referred to as “witness1” and [REDACTED], hereinafter referred to as “witness2”.

Preliminary Matters

4. The tenant did not submit an affidavit of service and the landlord did not waive service. Application 2024-0628-NL will not be adjudicated in this decision and is dismissed.
5. The landlord submitted an affidavit indicating the tenant was personally served with an Application for Dispute Resolution at 10:15 AM on 12 July 2024 (**Exhibit L # 1**). The tenant did not dispute receipt of this notification. This is appropriate service as determined in the *Residential Tenancies Act*, 2018.
6. There was dispute about the rental agreement as the landlord testified there was a written agreement for [REDACTED], which the tenant moved in on 4 July 2024. Rent is set at \$650.00 due on the first of each month, all utilities included. There was a security deposit collected on 4 July 2024 in the amount of \$450.00, still in possession of the landlord. The tenant stated he moved into the rental on 4 April 2024.
7. In a proceeding under the *Residential Tenancies Act*, 2018, 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. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicant has to establish that his account of events is more likely than not to have happened.

Issues before the Tribunal

8. The landlord is seeking the following:
- An Order of Vacant Possession/Possession of the rental property;
 - Compensation for damages in the amount of \$661.25;
 - The security deposit to be applied against payment owed; and
 - Hearing expenses in the amount of \$20.00.

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in Sections 46 and 47 of the *Residential Tenancies Act, 2018*.
10. Also, relevant and considered in this claim are Sections 18, 24, 34 and 35 of the *Act*, along with Policy 07-005 of the *Residential Tenancies Program*.

Issue 1: Vacant Possession of the Rental Premises

Landlord Position

11. The landlord testified there was a written monthly rental agreement. Along with his application, the landlord provided a copy of this written agreement (**Exhibit L # 2**). The landlord stated since the tenant had taken occupancy of the rental premises, he had been contacted by other tenants of the rental indicating the actions of the tenant and individuals he was letting into the rental, was having an impact on the other tenants' peaceful enjoyment of the premises (**Exhibit L # 3**). There were visitors frequenting the tenant's residence all hours of the day and police had been dispatched on more than one occasion in relation to the tenant and his peers.
12. Witness1 testified he had experienced "constant disruption" with people consuming alcohol and making noise outside his window when the tenant was present at least three times. Police were said to have been involved on more than two situations due to noise disturbances overnight between the hours of 10 PM and 2 AM.
13. Witness2 testified during his tenancy at the rental premises for two weeks, he stated the tenant had a negative impact of his peaceful enjoyment. Witness2 stated that an acquaintance of the tenant had attempted to kick the door in of the rental premises and he described himself as "put in constant anxiety for two weeks", which witness2 attributed to the tenant and the individuals he admitted into the rental.
14. The landlord stated he personally served the tenant a Tenant's Notice to Terminate Early- Cause (**Exhibit L # 4**) under Section 23 on 8 July 2024 with a request for him to vacate by 14 July 2024.

Tenant Position

15. The tenant did not dispute receiving the Section 23 termination notice. He did dispute that police were dispatched due to his actions and claimed, "I can't control the people outside. The police were called because of someone I let in". He stated the rental was immediately next to a homeless shelter.
16. The tenant testified that prior to the door of the rental being damaged, he had let the individual in. The tenant stated, "he came to see me, but I didn't ask him to damage the door".
17. The tenant did not dispute the landlord had previously spoken with him about concerns with his actions in the rental premises on more than one occasion.

Analysis

18. Policy 07-005 of the *Residential Tenancies Program: Interference with Peaceful Enjoyment and Reasonable Privacy* offers clear definition of what actions define interfering with other tenants or a landlord's peaceful enjoyment of a rental premises. As stated within this policy, "*an ongoing unreasonable disturbance or activity, outside of normal everyday living, cause by the landlord or tenant or someone permitted on the premises by the landlord or tenant. This includes any unreasonable disturbance that interferes with right of the landlord to maintain and manage the rental property*".
19. The landlord and two tenants of the rental property offered testimony as to how the actions of the tenant was impacting the peaceful enjoyment of other tenants on the premises. The landlord testified and the tenant did not dispute he had been issued a termination notice by personal service on 8 July 2024. This is an identified means of service as defined within the *Act*.
20. Section 34 of the *Residential Tenancies Act, 2018*, is clear in that a notice under this *Act* shall
 - (a) *be in writing in the form prescribed by the minister;*
 - (b) *contain the name and address of the recipient;*
 - (c) *identify the residential premises for which the notice is given; and*
 - (d) *state the section of this Act under which the notice is given.*
21. While components (a) to (c) of Section 34 are adhered to; upon review of the Termination Notice which the landlord personally served to the tenant on 8 July 2024 (**Exhibit L # 4**), I observe the termination notice is question is a "Tenant's notice to Terminate Early – Cause" and cites Section 23 of the *Residential Tenancies Act, 2018*, which deals with situations whereby landlords contravene the peaceful enjoyment and

reasonable privacy of tenants. This is an invalid notice of termination as it was the landlord seeking the termination notice, not the tenant.

Decision

21. The landlord's notice of termination dated 8 July 2024 is not valid.

Issue 2: Compensation for damages - \$661.25

Landlord Position

22. The landlord testified he was seeking compensation in the amount of \$661.25 for a bedroom door which was damaged by someone the tenant permitted into the rental address which had to be replaced. Along with his application, the landlord provided a Compensation for Damages form (**Exhibit L # 5**).
23. As indicated herein, a witness of the landlord testified he was present when the acquaintance of the tenant damaged the door. The landlord also supplied a text correspondence about the date which the door was damaged by a peer of the tenant (**Exhibit L # 6**).
24. Witness2 testified he observed damage to the door and door frame and the individual responsible for this was let in the rental by the tenant.

Tenant Position

25. The tenant disputed that he should be responsible for compensation for damages as he was not the individual who damaged the door. He testified during the hearing, "I can't control the people outside. He came to see me, but I didn't ask him to damage the door".

Analysis

26. Applicable to this situation is Section 10 (1) 2 of the *Residential Tenancies Act*, 2018.

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:

...

2. Obligation of the Tenant- The tenant shall keep the residential premises clean, and shall repair damage caused by a wilful or negligent of the tenant or a person whom the tenant permits on the residential premises.

27. There was testimony and evidence (**Exhibit L # 6**) provided by both the landlord's witness and the tenant, that an individual who the tenant had previously let into the rental premises caused the damages. While the tenant argues he has no control over another's actions, he does have a statutory obligation to repair damage caused by a willful or negligent act of a person that he permits on the premises.
28. Upon review of the Compensation for Damages form supplied by the landlord (**Exhibit L # 5**), the costs with replacement of the door and door frame is identified as \$661.25. The question I have is whether more evidence could have been provided. Of particular note, the landlord did not suggest the ages of the door itself and door frame, nor was there any insight into the materials of the door and door frame (i.e. wooden, metal, etc).
29. Policy 09-003 of the *Residential Tenancies Program: Claims for Damages to Rental Premises* is clear on what is required a claim for damages. As noted within that policy, "*When making a claim for damages, the applicant shall indicate the total amount of the claim and a detailed breakdown of the damages, with each item valued. Claims exceeding the amount of the security deposit shall be accompanied by at least one independent written estimate or receipt(s)*". The landlord did provide the total amount he was seeking but did not offer a break down of how much the purchase of the new door and door frame, the receipts for replacement of the items or the labour costs associated with installation of those items.
30. As indicated herein, I do find the tenant responsible for damages. The question which follows is in what amount? Any able body individual could install a new door and door frame within two hours. Policy 09-005 of the *Residential Tenancies Program: Life Expectancy or Property* identifies self-labour's monetary value set at minimum wage + \$8.00 per hour ($\$15.60 + \$8.00 = \23.60 x two hours labour = \$47.20).
31. A hardware supplier values pre-hung interior wooden doors at \$198.00 + sales taxes = \$227.70.
32. Compensation for the damaged door and door frame, along with installation and labour amounts to **\$274.90**.

Decision

33. The landlord's claim for compensation for damages succeeds in the amount of **\$274.90**.

Issue 3: Security Deposit applied against compensation owed.

Landlord Position

34. The landlord testified the tenant had paid the security deposit in the amount of \$450.00 on 4 July 2024 and was seeking this to be used against compensation owed.

Tenant Position

35. The tenant stated he was not responsible for the damage to the door and door frame and should not financially be responsible for this.

Analysis

36. As indicated herein, the landlord's claim for vacant possession fails and the tenant remains in the occupancy at the time of the hearing. As the tenancy remains in place, it would be premature at this time to determine the disposition of the security deposit. If and/or when the tenant vacates the residential premises, as per Section 14 of the *Act* the parties can determine the disposition of the security deposit amongst themselves or file application to the director under Section 42 to determine disposition.

Decision

37. The disposition of the security deposit will not be determined at this time.

Issue 4: Hearing Expenses

38. Along with his application, the landlord provided a copy of the receipt for the hearing expense (**Exhibit L # 7**).

Decision

39. As the landlord's application partially succeeds, the tenant shall be responsible for the **\$20.00** hearing expense.

Summary of Decision

40. Finds that the termination notice, dated 8 July 2024 is not a valid notice.

40. The landlord is entitled to **\$294.90** determined as follows:

- Compensation for damages.....\$274.90
- Hearing Expense.....\$20.00
- Total.....**\$294.90**

13 August 2024 _____

Date



Michael Reddy, Adjudicator
Residential Tenancies Office