

Residential Tenancies Tribunal

Decision 19-0546-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:10 pm on 24 October 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing by teleconference.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as "tenant1" and "tenant2", respectively, also participated in the hearing.

Issues before the Tribunal

4. The landlord is seeking a determination of the validity of a termination notice issued to him on 30 June 2019.

Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
6. Also relevant and considered in this case are sections 10 and 23 of the *Residential Tenancies Act, 2018*.

Issue 1: Validity of Termination Notice

Relevant Submissions

The Tenant's Position

7. With his application, the landlord had submitted a lease (■ #1) showing that the tenants had agreed to rent the rental unit for a period of 1 year, from 01 November 2018 to 31 October 2019. The agreed rent was set at \$1700.00 per month and it is acknowledged in the lease that the tenants had paid a security deposit of \$1275.00.
8. Tenant2 complained about several issues that arose during this tenancy.
9. Firstly, she pointed out that when they first moved into the unit in November 2018, the microwave, oven and refrigerator did not work. She complained to the landlord about the matter but it took him 3 weeks to have the issue addressed. Tenant2 stated that every time there was a maintenance issue at the unit, it would take the landlord several weeks to have it addressed as he always had to first "check with his wife".
10. Besides the appliances, tenant2 stated that they were having an issue with the garage door and it would open at times all by itself. A neighbour had informed her that the landlord had also been having issues with that door and the landlord had tried to repair it himself.
11. Tenant2 also complained that she noted a burning smell in the bedroom closet and the downstairs laundry room whenever she turned on the lights. When she informed the landlord about the matter, on 17 June 2019, he became angry and accused her of coming up with an excuse to try to get out of her lease.
12. She stated that the landlord did eventually call an electrician to visit the unit but when he showed up, he was accompanied by a friend of the landlord. Tenant2 stated that the landlord did not inform her that anyone besides the electrician would be visiting the property and she claimed that this person had made her feel uncomfortable.
13. Tenant2 also claimed that one of the neighbours was oftentimes seen snooping around the property taking pictures of them and she claimed that the landlord also had friends of his driving by the property. She claimed that she felt like a prisoner in her home because of everyone monitoring their activity.
14. She also complained that she had received assurances from the landlord when she moved in that he would not try to sell the property during their tenancy. However, because of the all the issues just recounted, they informed the landlord that they would not be renewing their lease. On receiving that news, the landlord asked if he could put the house on the market and he had a realtor visit the property 2 days later.
15. Tenant2 stated that she was concerned that if the landlord sold the property before the term of their lease was up, they would be unable to find a suitable apartment in time. She stated that she voiced her concerns to the landlord's wife

and informed her that if the property was sold before the lease expired, they would see out their remainder of their lease. She claimed that the landlord's wife became angry at that suggestion and also told her that "she has access to everything that she says". Tenant2 stated that she took this to mean that the landlord's wife somehow was able to monitor their conversations in the rental unit.

16. Both of the tenants also complained about the landlord's wife's demeanor. They claimed that during several conversations that they had had with her over the telephone she would yell at them and on one occasion when speaking with the landlord they could hear her screaming in the background.
17. Because of these issues, the tenants sent the landlord a termination notice, by e-mail, on 30 June 2019. That notice was issued under section 23 of the *Residential Tenancies Act, 2018* (notice where landlord contravenes peaceful enjoyment and reasonable privacy) and it had an effective termination date of 06 July 2019.
18. On 03 July 2019, the landlord sent a response e-mail to the tenants pointing out that the tenants had only written his name on the notice and that they should have included his wife's name as well as she is also the homeowner and landlord. The tenant reissued the notice on the same day, with the only correction being that the landlord's wife's name was included.
19. The tenants vacated the premises on 06 July 2019.

The Landlord's Position

20. Regarding the issues with the appliances at the beginning of the tenancy, the landlord stated that before the tenants had moved into the property he had turned off the electricity to the unit. After the tenants informed him that these appliances were not working, he had an electrician go to the unit the following day. His electrician informed him that the reason why the refrigerator was not working was because it was not supposed to be switched off or disconnected from electricity at any time.
21. The landlord claimed that that very same day he had the appliances replaced at the unit and he disputed the tenants' claim that this went on for 3 weeks.
22. He also stated that he had his realtor find a repairman for the garage door and he had paid to have it repaired.
23. The landlord claimed that on 27 May 2019 he received a text-message from the tenants in which they had indicated that they would not be renewing their lease as they were finding it financially difficult to pay the rent and the utilities. The landlord stated that he then decided to list the house for sale and he did acknowledge that he had a conversation with them about what would happen if he found a buyer prior to the expiration date of the lease. The landlord denied

that he had given the tenants any assurances that he would not sell or list the property for sale during the tenancy.

24. The landlord also claimed that the tenants had sent a text-message to him in June 2019 informing him that they had found new apartment at \$1200.00 per month and they wanted to move out of the unit within a week. The landlord stated that this was unfair to him and he tried to negotiate a settlement with the tenants. He stated that the tenants had offered to him that could keep the security deposit, while he suggested that they pay rent up to September 2019.
25. The landlord stated that the tenants threatened that if he did not allow them to break the lease early, they would not allow any prospective buyers to view the property during their tenancy. The landlord responded by saying that he would take the house off the market and he would hold the tenants responsible for the full term of the lease.
26. The landlord claimed that after this conversation he was unable to reach the tenants by e-mail or telephone for several weeks until 17 June 2019 when he received a request for repairs by e-mail. This was the complaint about the burning smell. The landlord pointed out that the rental unit was brand new and everything was under warranty, including the electrical system. He figured that the tenants had been plugging something into the sockets that they should not have.
27. He stated that when he informed the tenants that he was sending an electrician to the unit he told them at that time that he would also be send his representative as well, as he was living out of the province. He denied that he had people spying on the tenants.
28. The landlord stated that the electrician informed him that there was nothing wrong with the electrical system at the house and he suspected that the tenants may have been using light bulbs with a wattage that was too high.
29. He also testified that the electrician told him that when he visited the unit, on 24 June 2019, the tenants had already cleaned out the house and they were moving items into a moving truck. This was confirmed by his realtor, who had a showing at the unit on 25 June 2019. He stated that his realtor had informed him that the tenants had removed almost all of their possessions from the unit on that date.
30. The landlord argued that the tenants had not issued the termination notice in good faith and he stated that there were no issues of peaceful enjoyment or with privacy violations. He claimed that the tenants were merely looking for a way to get out of their lease early.

Analysis

31. Statutory condition 7.(b), set out in section 10.(1) 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 -

(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. and according to section 24 of this Act.

and section 23 of this Act states:

Notice where landlord contravenes peaceful enjoyment and reasonable privacy

23. (1) Notwithstanding subsection 18(1) and paragraph 18(3)(a), where a landlord contravenes statutory condition 7(b) set out in subsection 10(1), the tenant may give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises on a specified date not less than 5 days, but not more than 14 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 tenant;

(b) state the date on which the rental agreement terminates and the tenant intends to vacate the residential premises; and

(c) be served in accordance with section 35.

32. Many of the issues raised by the tenants don't have to do with issues of peaceful enjoyment or privacy and they do not come into my thinking in assessing the validity of this notice. Those issues include the matter with the appliances when the tenants moved in, the faulty garage door, the issue with the electricity and the issue of whether there existed an agreement that the landlord would not put the house up for sale during the tenancy.
33. The tenants alleged that their neighbour had been snooping around the house taking pictures of them and that this had been arranged by the landlord. They also contended that he had also arranged to have people drive by their house

and monitor their activities. These issues might constitute an invasion of privacy. However, the landlord denied these allegations and I find that the tenants presented no credible evidence at the hearing to substantiate their claims.

34. I also find that in sending a representative to act on his behalf while the electrician visited the rental unit, the landlord had not committed an invasion of privacy and it was the landlord's testimony that he had given the tenants notice that his representative would be present.
35. The landlord also denied that his wife had been yelling or screaming at the tenants and I again find that the tenants presented no corroborating evidence to substantiate these claims.
36. I conclude, then, that the tenants have failed to establish, on the balance of probabilities, that the landlord had been interfering with their peaceful enjoyment or that he had been imposing on their privacy. It seems more probable to me that the landlord's version of events is correct and that the reason the tenants were vacating in July 2019 was because they had found a new apartment which was more affordable and they were looking for some way to break their lease.
37. I'll also point out that when the tenants reissued the notice on 03 July 2019, it still specified a termination date of 06 July 2019, meaning that the tenants had only given the landlord a 2-day notice that they were vacating. Section 23 of the Act, however, requires that the tenants provide at least 5 days notice that they are terminating their agreement.

Decision

38. The termination notice issued to the landlord on 30 June 2019, and reissued on 03 July 2019, is not a valid notice.

03 April 2020

Date


John R. Cook
Residential Tenancies Tribunal