

Residential Tenancies Tribunal

[REDACTED] Decision 20-0314-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:12 pm on 03 September 2020 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the tenant", participated in the hearing.
3. The respondents and landlords, [REDACTED] and [REDACTED], were represented at the hearing by [REDACTED] ("[REDACTED]").

Issues before the Tribunal

4. The tenant is seeking the following:
 - A determination of the validity of a termination notice issued to him on 24 July 2020, and
 - An order for compensation for inconvenience in the amount of \$4650.00.

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 is section 24 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

7. [REDACTED] called the following witness:
 - [REDACTED] ("[REDACTED]") – upstairs tenant

Issue 1: Validity of Notice

Relevant Submissions

Background

8. The tenant stated that he had entered into a 1-year, fixed-term rental agreement with the landlords on 10 July 2020 and a copy of the executed lease was submitted with his application. According to this lease, it was agreed that the tenant would pay \$392.00 in rent every 2 weeks, and although it is acknowledged in the lease that the tenant had paid a security deposit of \$425.00, he testified that he had only given the landlord \$400.00.
9. On 24 July 2020, a representative for the landlord delivered a termination notice to the tenant's apartment. That notice was issued under section 24 of the *Residential Tenancies Act, 2018* (notice where tenant contravenes peaceful enjoyment and reasonable privacy) and even though it indicates on the first page of the notice that the tenant was to vacate that same day, it states on the second page that the tenant was to move by 31 July 2020. The tenant stated that the landlord's representative had also indicated that he was to vacate by 31 July 2020.
10. The tenant vacated the unit on 03 August 2020.
11. The tenant contended that he had not been interfering with anyone's peaceful enjoyment and he is seeking an order from this Tribunal declaring that the termination notice is invalid.

█'s Testimony

12. █ called █ as a witness.
13. █ reported that she had had several issues with the tenant almost immediately after he had moved into the basement apartment below her.
14. Firstly, she complained that the tenant had erected some sort of wooden structure in her backyard, just below her deck, just the day after he had moved in. She complained that this structure was an eyesore and she questioned whether the tenant had the appropriate permits to build it. She also stated that the tenant had left scrap pieces of wood in the yard as well as other garbage.
15. The second issue concerned the behaviour of the tenant. █ stated that she and her neighbour voiced their concerns to the tenant about the safety of the structure and they pointed out to him that there are young children in the area and well as pets. She testified that the tenant became verbally abusive towards her and her neighbour when confronted and she claimed that he had been yelling. She also testified that the tenant had been banging on her neighbour's door and yelling profanities. █ stated that the tenant had been scaring her

neighbour's children because of the yelling and screaming and she had to call the police.

16. She additionally claimed that the tenant had been accusing her and her neighbour of surreptitiously looking at the tenant through their windows. █ stated that he had approached them both and had threatened to call the police on them and have them charged with "watching".
17. █ also recounted an incident when she had gone onto her back deck one morning, in her pajamas, to have a coffee, and she discovered that the tenant had been looking up at her from the structure he had built. She claimed that this had made her feel uncomfortable. She also complained that the tenant had been smoking marijuana cigarettes under her back deck.
18. █ claimed that because of the yelling and profanities, and because of the tenant's accusations, she no longer felt comfortable in her apartment and she claimed that the tenant had been interfering with her peaceful enjoyment. She testified that she informed the landlord that if he did not take care of the situation with the tenant she would no longer be able to reside at the property.

The Tenant's Position

19. The tenant stated that he had received permission from the landlord, before the tenancy began, to move his shed onto the property. He stated that he uses the shed to store some of his items there and it also doubles as an outdoor work-out area. He testified that there was no indication given to him before he moved in that he would require any permits.
20. The tenant also suggested that it was █ and his neighbour who had been interfering with his enjoyment of his property. He alleged that he had overheard them refer to him as an "animal" in the way in which he had been hammering on the loose lumber to remove the nails and he also testified that they were frequently looking at him through their windows while he was in the yard. He stated that this was an invasion of his privacy and that was the reason he had threatened to call the police.
21. He also acknowledged that, after he had been informed by the landlord that he was going to have to move out of the property, he did become very angry and he had had confronted his neighbour about the issue. He acknowledged that he had banged on her door loudly, but he stated that it was not hard enough to break the door or damage the glass. He also conceded that on this one occasion he had raised his voice. The tenant testified that he had "yelled to the top of his lungs": "You're ruining my █ baby's life". He stated that he would not have been "surprised if the whole neighbourhood had heard him".
22. The tenant also acknowledged that the police had been called after that altercation. But he claimed that, after having a conversation with him, they did

not find his behaviour objectionable enough to press any charges and he stated that they had had actually laughed at the complaint.

23. Regarding the complaint about the smoking, the tenant also acknowledged that as a part of their lease, he had agreed not to smoke in the apartment. However, he claimed that the landlord knew he would be smoking outside, and the landlord did not express any objection to him about that compromise. He also stated that he had promised not to smoke around children.
24. And with respect to [REDACTED]'s complaint that he had been looking up at her from underneath her deck, the tenant stated that he had not been looking up at her and he pointed out that he was already outside in his shed when [REDACTED] came onto her deck.
25. In sum, the tenant argued that, except for the one occasion where he had yelled out in the backyard, the allegations made against him by [REDACTED] and his neighbour were false and the landlord did not have grounds to issue him a termination notice.

Analysis

26. Statutory condition 7.(a), 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 -

(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 of this *Act*:

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.*

27. On review of the testimony of [REDACTED] and of the tenant himself, I find that the landlord was in a position, on 24 July 2020, to issue a termination notice under this section of the Act.
28. The tenant acknowledged that he was furious when he went over to his neighbour's house and he admitted that he had been banging on her door. He also admitted that he was yelling loudly that day, that he had used profanities and that the police were called as a result. I agree with [REDACTED] that this sort of aggressive and antisocial behaviour is unreasonable and I also accept her claim that she had felt uncomfortable and that the tenant's behaviour had interfered with her quiet and enjoyment of her premises.
29. As the tenant's antisocial behaviour had interfered with [REDACTED]'s peaceful enjoyment, and as the termination notice meets the timeframe requirements set out in this section of the Act, I find that the notice is valid.

Decision

30. The termination notice issued to tenant on 24 July 2020 is a valid notice.

Issue 2: Compensation for Inconvenience - \$4650.00

Relevant Submissions

The Tenant's Position

31. The tenant argued that because the termination notice issued to him was invalid and because he had to leave his new apartment just a few weeks after he had moved in, expecting that he would be there for a year or more, he was greatly inconvenienced and he incurred unnecessary costs as a result.
32. With his application, he submitted a breakdown of those costs. He is seeking \$4650.00 in compensation for the inconvenience he suffered.

33. \$120.00 of those costs were for the rental of a U-Haul truck and the costs of gasoline to move out of the rental property. No receipts were submitted with his application.
34. The tenant also stated that he had paid \$240.00 to have the shed and work-out station moved to the rental property. He stated that because he had to move on such short notice he was required to sell the shed and he could not take it to his new apartment. He is seeking the costs he had incurred to originally move the shed to the unit as well as the \$300.00 he had paid for the costs of constructing the shed. No receipts were submitted with his application.
35. The tenant also stated that when he had moved into the apartment, he had purchased a sectional couch, as ottoman and a new table set. He testified that these items were oversized, as the apartment was quite large, and he claimed that he now has to get rid of these items as his current apartment is too small for them. He is seeking to have the landlord reimburse him for the costs of purchasing these pieces of furniture--\$500.00 for the couch and ottoman and \$100.00 for the table set. No receipts were submitted with his application.
36. The tenant also testified that when he had moved into the rental unit, he was attending school and had been receiving a bi-weekly benefit of \$755.00. The tenant argued that after he was evicted, he had to drop out of school and he took advantage of the Canada Emergency Response Benefit (CERB) for financial support. He pointed out, though, that these CERB benefits had to be repaid. He claimed that if he had not been evicted, he would not have had to take advantage of CERB and he would have continued to receive his \$755.00 bi-weekly payments. In compensation for the impact this improper eviction had on his finances during this period, the tenant is seeking \$3020.00, an amount equivalent to 4 bi-weekly payments of \$755.00.
37. He also complained that the washing machine at the rental unit was not properly working. With his application, he submitted a copy of a Tenant's Request for Repairs notice, dated 20 July 2020. According to that notice, the washing machine was to be repaired by 23 July 2020. The tenant stated that he never did give that notice to the landlord but rather had sent it to his case worker. The tenant is seeking \$50.00 for the costs of travelling to [REDACTED] from [REDACTED] to wash his clothing.
38. The tenant's final complaint was that he had secured a gym membership in [REDACTED] at a cost of \$400.00. He stated that as he has now moved to a new apartment, this gym is too far away and his membership has gone to waste. He is seeking reimbursement for the \$400.00 fee he had paid. No receipt was submitted at the hearing.

The Landlord's Position

39. [REDACTED] argued that the notice issued to the tenant was indeed valid and that therefore the landlord is not liable for any of the costs the tenant is seeking here.

40. He stated that the landlord had issued the notice because of the complaints that he had received from [REDACTED] and the neighbour about his behaviour. He also claimed that although the landlord was aware that the tenant wanted to build a work-out area in the yard, he had not given him permission to construct a shed and he again pointed out that the tenant did not have the appropriate permits to erect such a structure.

Analysis

41. I agree with the tenant that having to move on such short notice is an inconvenience and can lead to unexpected expenses. However, as I have already determined in the preceding section that the termination notice issued to the tenant was valid notice, the landlord cannot be held liable for these expenses.

42. But I'll also point out that the tenant presented no evidence to corroborate any of the costs that he is seeking here. No evidence was presented to show that he had rented a U-Haul truck, that he had paid to have his shed moved to the rental unit, or to show that he had signed up for a gym membership in [REDACTED].

43. Furthermore, there was inadequate evidence to establish that there was any connection between the eviction in July 2020 and the tenant's decision to apply for CERB, instead of continuing with his schooling in September 2020.

44. I was also not persuaded that the tenant is entitled to the costs of the inconvenience of having a broken washing machine. Firstly, the tenant could have mitigated the costs he claimed here by laundering his clothing at a location closer to the rental unit. [REDACTED] is 27 kilometers away. Secondly, the Tenant's Request for Repairs was not delivered to the landlord, but was rather given to the tenant's case worker. I don't see how the tenant expected the landlord to comply with a notice that was not even given to him.

Decision

45. The tenant's claim for compensation for inconvenience does not succeed.

17 November 2020

Date

[REDACTED]
John R. Cook
Residential Tenancies Tribunal