

Residential Tenancies Tribunal

Application [REDACTED]

Decision 20-0481-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:04 pm on 04 December 2020 via teleconference.
2. The applicant, [REDACTED] hereinafter referred to as “the landlord”, participated in the hearing. The respondent, [REDACTED] hereinafter referred to as “the tenant”, did not participate.

Issues before the Tribunal

3. The landlord is seeking the following:
 - a. An order for a payment of rent in the amount of \$1950.00,
 - b. An order for vacant possession of the rented premises, and
 - c. Authorization to retain the security deposit of \$425.00.

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this case are section 19, 21, 24 and 35 of the *Residential Tenancies Act, 2018*, rule 29 of the *Rules of the Supreme Court, 1986* and David Mullin’s *Administrative Law, 3rd ed.* (Carswell, 1996).

Preliminary Matters

6. The tenant was not present or represented at the hearing and I was unable to reach her by telephone. This Tribunal’s policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing

date and, where the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as she has been properly served. The landlord submitted an affidavit with his application stating that he had sent his application to the tenant, by registered mail, on 03 November 2020. According to the tracking history, the tenant never did collect that registered letter and it was returned to him sometime after 20 November 2020. Although the tenant did not receive the landlord's application and notice of this hearing, according to section 42.(6) of the *Residential Tenancies Act, 2018*, as it was sent by registered mail, it is considered to have been served on the tenant on the fifth day after mailing—in this case, 08 November 2020. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.

7. The landlord amended his application and stated that he was seeking an additional \$1700.00 in rent for a total claim of \$3650.00.

Issue 1: Rent - \$3650.00

Relevant Submissions

8. The landlord stated that he had entered into a monthly rental agreement with the tenant on 17 December 2018. The agreed rent is set at \$850.00 per month and the landlord stated that the tenant had paid a security deposit of \$425.00.
9. The landlord submitted rent records with his application showing the payments he had received from the tenant since she moved into the property. According to these records, the tenant last had a zero-balance at the end of June 2020. In July 2020, the tenant paid the landlord \$600.00 of the required rent, leaving her with a balance of \$250.00. The full rent was paid for August 2020, but the records show that no rent has been paid since.
10. The landlord is seeking and order for a payment of \$3400.00 in rent for the months of September, October, November and December 2020 (4 months x \$850.00 per month) as well as a payment of the remaining \$250.00 owing from July 2020.

Analysis

11. I accept the landlord's testimony and evidence in this matter and I find that the tenant had not paid rent as required since July 2020. His records show that the tenant is currently in arrears in the amount of \$3650.00 for the period ending 31 December 2020 and I therefore find that his claim succeeds in that amount.

Decision

12. The landlord's claim for an order for a payment of rent succeeds in the amount of \$3650.00.

Issue 2: Vacant Possession of Rented Premises

Relevant Submissions

13. With his application, the landlord had submitted 2 termination notices he had issued to the tenant. The first notice, dated 14 October 2020, was issued under sections 19 and 24 of the *Residential Tenancies Act, 2018* (notice where failure to pay rent, and notice where tenant contravenes peaceful enjoyment and reasonable privacy) and it had an effective termination date of 29 October 2020. The second notice, dated 18 November 2020, was issued under section 21 of the *Act* (notice where premises uninhabitable) and it had an effective termination of that same day.

Premises Uninhabitable, 18 November 2020

14. With respect to the second termination notice, dated 18 November 2020, the landlord stated that he was uncertain as to when he had issued it to the tenant, but he surmised that it was probably sent to her, by text-message, on 19 November 2020.
15. In any case, the landlord requested that I assume that she did not receive the notice and he figured that it was invalid anyhow. He stated that he had issued the notice to the tenant because the electricity to her apartment had been disconnected, but he complained that he was unable to get any e-mail evidence from Newfoundland Power confirming that the electricity had been disconnected or any e-mail evidence showing that the termination notice was issued on the same day that the electricity was disconnected.
16. The landlord stated that the electricity has now been reconnected at the apartment and he stated that he would rely on the first notice, discussed below, to have the tenant evicted.

Rent Arrears, Peaceful Enjoyment, 14 October 2020

17. With respect to the notice issued on 14 October 2020, the landlord testified that he had sent it to her by registered mail and he supplied the tracking number at the hearing. According to the associated tracking history, that notice was mailed on 14 October 2020 and a notice card was left on the following day. The letter was not collected by the tenant and a second notice card was left on 22 October 2020. On 03 November 2020, that notice was returned to the landlord.
18. On this termination notice, the landlord had indicated that he was terminating his agreement with the tenant under 2 sections of the *Residential Tenancies Act, 2018*: s. 19, failure to pay rent, and s. 24, interference with peaceful enjoyment.

19. With respect to the issue of rent, the landlord's records show that the tenant has been in rental arrears since July 2020 and after the termination notice was sent to the tenant on 14 October 2020, he has received no rent payments from her.
20. Regarding the issue of peaceful enjoyment, the landlord stated that in the past several months he has received complaints from the upstairs tenant, ■■■, about loud arguments that can be heard coming from the tenant's apartment in the early hours of the morning. The landlord stated that ■■■ has also complained to him about the smell of marijuana smoke coming from the tenant's apartment, although he stated that when he confronted the tenant about that matter, she denied that she had been smoking in her apartment.

Analysis

21. With these notices, the landlord is seeking to have the tenancy terminated for 3 different reasons. Unfortunately, he has failed in each case.
22. Regarding the most recent notice, issued on 19 November 2020, section 21 of the *Residential Tenancies Act, 2018* states:

Notice where premises uninhabitable

21. (2) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where an action of, or a failure to act by, a tenant makes a residential premises unfit for habitation, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises effective immediately.

(3) In addition to the requirements under section 34, a notice under this section shall

(a) be signed by the person providing the notice;

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

(c) be served in accordance with section 35.

23. According to this notice, the landlord requires that the tenant vacate the rented premises on 18 November 2020 as the electricity at the unit had been disconnected, making the premises uninhabitable. Leaving aside the issue of whether the unit was uninhabitable, though, the notice is defective in that it was not sent to the tenant until 19 November 2020. A termination notice, even one that permits an immediate termination of the tenancy, cannot require that someone vacate the premises before they even receive the notice. When the tenant received the notice on 19 November 2020, it was impossible for her to

comply with it as it required her to move out the day previous. The fact that the notice was impossible to comply with makes it invalid.

24. The earlier notice, sent to the tenant on 14 October 2020, is also defective. That notice was issued for 2 different reasons. Let's look at the rent issue first.
25. The relevant subsections of section 19 of this *Act* state:

Notice where failure to pay rent

19. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),

...

(b) where the residential premises is

(i) rented from month to month,

(ii) rented for a fixed term, or

(iii) a site for a mobile home, and

the amount of rent payable by a tenant is overdue for 5 days or more, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 10 days after the notice is served on the tenant.

(2) Notwithstanding subsection (1), where the tenant pays the full amount of the overdue rent, including a fee under section 15, before the date specified in the notice under paragraph (1)(a) or (b), the rental agreement is not terminated and the tenant is not required to vacate the residential premises.

...

(4) 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.

26. Although I accept the landlord's claim that the tenant had been in rental arrears for longer than 5 days when the notice was issued, and although the tenant did not pay off those rental arrears prior to the effective termination date set out in

the notice (29 October 2020), the notice is nonetheless invalid as it does not meet the timeframe requirements set out here.

27. Subsection 19.(4)(c) states that a notice for rental arrears is to be served in accordance with section 35 of the *Residential Tenancies Act, 2018* and the pertinent subsections state:

Service of documents

35. (2) *A notice or other document under this Act other than an application under section 42 shall be served by a landlord on a tenant by*

...

(e) sending it to the tenant by prepaid registered mail or prepaid express post at an address

(i) provided by the tenant, or

(ii) where the tenant carries on business;

...

(5) For the purpose of this section, where a notice or document is sent by registered mail or express post, it shall be considered to have been served on the fifth day after mailing, and the service may be proved by providing evidence that the notice or document was prepaid and properly addressed and sent.

28. According to the tracking history associated with that notice, it was sent to the tenant on 14 October 2020, the same day the notice was dated. Although it was never collected by the tenant, it is considered to have been served on her on the fifth day after mailing—in this case, 19 October 2020.
29. But a notice served on 19 October 2020, with an effective termination date of 29 October 2020, is only a 9-day notice, not a 10-day notice, as required by section 19 of the *Act*. That is, section 19.(1)(b) states that a termination notice issued under this section must specify a termination date that is “not less than 10 days after the notice has been served on the tenant”. That means that there have to be 10 full, or clear, days between the date the notice is issued and the date the tenant is required to vacate. In counting those days, one does not count the day the notice is issued or the date the tenant is required to move. Starting at 20 October and ending on 28 October only gives us 9 days.
30. Regarding the issue of peaceful enjoyment, the *Act* 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.

31. As a notice under this section of the Act only requires that the landlord give the tenant 5 days to vacate, this 9-day notice does not run afoul of those timeframe requirements.
32. The problem here, though, is that the landlord has failed to establish that the tenant had been unreasonably interfering with █████ peaceful enjoyment.
33. Although I accept the landlord's testimony that he had been receiving complaints from █████ about noise and the smell of marijuana smoke in her unit, that testimony amounts to no more than hearsay. That is, the only evidence submitted by the landlord at the hearing were his statements about what someone else had told

him about what had been taking place at the rented premises. The landlord did not call [REDACTED] as a witness to give a first-hand account of what had been taking place at the complex or to give any evidence to establish that the tenant's behaviour had been interfering with her peaceful enjoyment.

34. Although this Tribunal is not bound by the rules of evidence found in our courts (cf. s. 46.(2)(c) of the *Residential Tenancies Act, 2018*), it would be unfair and a violation of the principles of natural justice to allow the tenant to be evicted based on these unfounded complaints alone. As David J. Mullan states in Administrative Law:

§163 Even though it is not bound by the strict rules of evidence, a tribunal may only act upon legally cogent evidence. Although an administrative tribunal may admit hearsay evidence, basing a finding which has serious consequences exclusively on hearsay and opinion evidence may still amount to a denial of natural justice or procedural fairness.

35. For these reasons, the landlord's claim does not succeed.

Decision

36. The termination notices issued to the tenant on 19 October 2020 and 19 November 2020 are not valid notices.
37. The landlord's claim for an order for vacant possession of the rented premises does not succeed.

11 December 2020

Date

[REDACTED]
John R. Cook
Residential Tenancies Tribunal