

Residential Tenancies Tribunal

Decision 21-0009-02

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:15 pm on 09 June 2021 via teleconference.
2. The applicant and landlord, [REDACTED], was represented at the hearing by [REDACTED], "[REDACTED]". The respondent, [REDACTED], hereinafter referred to as "the tenant", did not participate.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for vacant possession of the rented premises,
 - An order for a payment of \$1800.00 in compensation for damages, and
 - An order for a payment of \$18,360.00 in compensation for inconvenience.

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 sections 10 and 24 of the *Residential Tenancies Act, 2018* and rule 29 of the Rules of the Supreme Court, 1986.

Preliminary Matters

6. The tenant was not present or represented at the hearing and there was no available telephone number where he could be reached. 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) a respondent 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 he has been properly served. The landlord submitted an affidavit with her application stating that ■ had personally served the tenant with notice of the hearing on 17 May 2021 and he has had 22 days to provide a response. 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 his absence.

Issue 1: Vacant Possession of Rented Premises

Relevant Submissions

7. ■ stated that the landlord had entered into a fixed-term lease with the tenant on 19 January 2021 and a copy of that executed agreement was submitted with the landlord's application (■ #1). The agreed rent is set at \$850.00 per month and ■ stated that the tenant had paid a security deposit of \$400.00.
8. ■ stated that there are 3 other rental units at the complex and the landlord had been receiving complaints from each of them about the behaviour of the tenant. She stated that these tenants had informed the landlord that there are frequent fights in the tenant's unit and the landlord had been informed that the tenant had caused damage to his apartment, including the smashing of his TV. ■ also stated that the landlord was informed that the tenant had been using drugs and that he would become "out of hand" when he was using.
9. ■ stated that she had also had several run-ins with the tenant when she would visit the unit for various purposes. She testified that when she went to the unit the tenant would become very mad and aggressive and he curse and swear at her. The landlord stated that things became so bad on several occasions that she had to resort to telephoning the police. She acknowledged, though, that no charges were laid and that the tenant was never arrested.
10. The landlord also reported that the tenant had attacked her friend on one of these visits.
11. As a result of the complaints of the other tenants at the complex, and because of the altercations ■ had had with the tenant, the landlord served the tenant with a termination notice. A copy of that notice was submitted with his application. That notice was issued under section 24 of the *Residential Tenancies Act, 2018* (notice where tenant contravenes peaceful enjoyment and reasonable privacy) and it had an effective termination date of 21 April 2021.
12. ■ stated that she had personally given the tenant a copy of that notice on 17 May 2021. She also testified that a friend of the tenant, ■, had served the tenant with another copy of that notice on 21 April 2021. ■ claimed that the notice was probably also given to the tenant on an earlier date than 21 April 2021.

Analysis

13. 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.

14. ■■■'s evidence concerning the complaints that she had received from the other residents at the complex is hearsay evidence and I afford it little weight.

15. However, I do accept ■■■'s first-hand testimony that she had visited the unit on several occasions and that the tenant was confrontational, that he was cursing and swearing at her and that he was aggressive towards her and her friend.
16. That sort of antisocial behaviour is unreasonable and I find that it had been interfering with her right, as the landlord's representative, to safely visit the rental complex and to conduct inspections.
17. Because of those incidents described by ■■■, I find that the landlord was in a position, on 12 April 2021, to issue the tenant a termination notice under this section of the *Act*.
18. ■■■ stated that she had delivered the notice on 17 May 2021 and that ■■■ had delivered in on 21 April 2021. But as the termination date was 21 April 2021, and as the notice had to be served at least 5 clear days prior to the specified termination date, those deliveries of the notice do not meet the timeframe requirements set out in this section of the *Act* and they are therefore void and of no effect.
19. ■■■ did state that she believed that the notice was issued sometime prior to 21 April 2021 and on inspection of the evidence submitted by the landlord, I note that there is a copy of the same notice, signed by ■■■ on dated, by him, on 14 April 2021 (■■■ #5), leading me to the probable conclusion that it was also delivered to the tenant on that earlier date.
20. As that notice meets all the requirements set out in this section of the *Act*, it is a valid notice.

Decision

21. The landlord's claim for an order for vacant possession of the rented premises succeeds.
22. The tenant shall pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

Issue 2: Compensation for Damages - \$1800.00

Relevant Submissions

23. With his application, the landlord submitted the following breakdown of the costs he anticipates he will incur to repair damages caused to the rental property (■■■ #2):

- Cleaning \$200.00
- Paint walls..... \$200.00

- Damaged washing machine..... \$1400.00
- Total \$1800.00

24. ■ stated that the tenant’s apartment is currently in a state of disarray and she anticipates that he won’t clean it before he vacated. She is seeking \$200.00 in compensation for the time it will take her to clean it after the tenant moves out. ■ also complained that there is a smell of “weed” in the apartment and she is also seeking another \$200.00 for the costs she will incur to paint the walls at the apartment after the tenant vacates. ■ stated that she did not know when the walls were last painted.
25. ■ also claimed that, at sometime during this tenancy, the washing machine was, as far as she knew, damaged by the tenant. It was replaced by the landlord and he is seeking \$1400.00 in compensation for the costs of a replacement. No receipt was submitted at the hearing.

Analysis

26. I was not persuaded by the evidence submitted during the hearing concerning this portion of the landlord’s application and I therefore find that his claim for compensation for damages does not succeed.
27. No evidence was presented at the hearing to corroborate ■’s claim that the unit required cleaning and she presented no evidence to convince me that the tenant would not clean his unit before he vacated. Likewise with the painting. No evidence was presented showing that any damage had been caused to the walls and no evidence was presented to show that the tenant had been smoking in his apartment.
28. Regarding the washing machine, no evidence was presented to establish that it was damaged or to show that that damage was caused by the tenant. Furthermore, no receipt or invoice was submitted to establish that the landlord had incurred \$1400.00 to replace that washing machine.

Decision

29. The landlord’s claim for compensation for damages does not succeed.

Issue 3: Compensation for Inconvenience - \$18,360.00

Relevant Submissions

30. With his application, the landlord also submitted the following breakdown of the costs he is seeking in compensation for inconvenience (■ #2):

- Stealing of rent money \$600.00
- Money owed for snow clearing \$80.00
- Money lent for food \$80.00
- Complaint from upstairs tenant about smoking \$500.00
- Having to deal with 3 police visits \$500.00
- Loss of renter in Apartment A \$7800.00
- Loss of renter in Apartment B \$7800.00
- Loss of renter in Apartment C \$850.00
- ■■■ visiting apartment \$150.00

- Total \$18,360.00

31. ■■■ stated that the tenant’s rent is paid for by his social worker and that it is sent directly to the landlord. She stated that the landlord and the tenant had an agreement that the landlord would return to the tenant \$600.00 of the rent for April 2021 if he agreed to vacate the premises. She stated that the tenant did not move out of the unit as agreed and the landlord is looking to have the \$600.00 he had given to the tenant returned to him.
32. ■■■ also claimed that as a condition of his lease, the tenant was required to remove snow from the pathway leading to his apartment. She stated that the tenant did not live up to that obligation and the landlord had to hire someone, at a cost of \$80.00, to carry out that work during this tenancy.
33. ■■■ also testified that the landlord had lent the tenant \$80.00 because the tenant had informed him that he did not have any money for food. She stated that the tenant has not repaid that money and the landlord is seeking an order for a repayment of that amount.
34. ■■■ stated that the landlord had received complaints from the other residents at the complex about the smell of smoke coming from the tenant’s unit. The landlord is seeking \$500.00 in compensation for those complaints but ■■■ stated that she did not know what that \$500.00 was for and stated that the landlord “had just wrote it there”. ■■■ also did not know why the landlord was seeking \$500.00 for the 3 police visits and stated that this claim “was a stupid thing too”.
35. ■■■ also stated that the residents in the other 3 apartments at the complex all gave termination notices to the landlord and moved out of their units in May 2021 because of the problems they were having with the tenant. She stated that the residents in apartments A and B had been residing at the complex for several years and although they had initially entered into a fixed-term contract with the landlord, in 2021 their agreements were running on a month-to-month basis. The monthly rent in these 2 apartments was each set at \$650.00 per month and the landlord is seeking compensation for the loss of 1 year’s rent, from May 2021 through to April 2022, for each of these apartments—\$7800.00 each. He is also seeking compensation for the loss of 1 month’s rent for apartment C. The rent at that unit was set at \$850.00 per month.

36. ■ also stated that she lives in Gambo, a 2 hour drive from the rental unit. The landlord is also seeking \$150.00 in compensation for the costs she had incurred in travelling to and from the unit to deal with the tenant after he had promised to move out of the unit.

Analysis

37. Regarding the rent, I accept ■'s claim that the landlord had refunded \$600.00 to the tenant based on his promise that he would vacate the unit in early April 2021. As the tenant did not vacate as required, I agree with the landlord that he owes the full amount of rent for that month. As the landlord is only holding \$250.00 in rent for the month of April 2021, I agree with him that he is entitled to a payment of the remaining \$600.00 owing for that month as the tenant had use and enjoyment of the apartment during that period.
38. On review of the lease, I do note that the tenant is responsible for snow-clearing and it was ■'s testimony that the tenant did not live up to that obligation. On review of the documents submitted by the landlord, I was able to locate some receipts for snow clearing for January, February and March 2021 (■ #3, #4) showing that the landlord had incurred costs to have the complex cleared of snow. On that evidence, I agree that the landlord is entitled to a payment of \$80.00.
39. Regarding the money the landlord had lent the tenant for food, I find that that transaction falls outside of the landlord-tenant relationship as captured in the lease or the *Residential Tenancies Act, 2018*. By not repaying the landlord, the tenant has not breached his rental contract or the *Act*.
40. I was also not convinced that the landlord is entitled to the \$500.00 for the complaints about smoking and the \$500.00 for the police visits. No explanation was given as to why the landlord was seeking those particular amounts and no evidence was presented showing that he had incurred any costs associated with the complaints or the police visits. Additionally, ■ indicated that she thought these claims were "stupid".
41. With respect to the claim for lost rental income from the tenants who moved out of apartments A, B and C, I also find that that claim does not succeed.
42. First of all, ■ stated that these tenants were in monthly rental agreements, and under the *Residential Tenancies Act, 2018*, they are only required to provide the landlord with 1 month's notice that they were terminating their rental agreement. As they were not in fixed-term leases, the landlord is not entitled to the rent they may have paid over the next year as they could have legally terminated their agreements at any point, on a month's notice.
43. Secondly, ■ stated that the landlord had been advertising the unit for new renters and there have been several viewings. Although no new tenants have yet signed on, no evidence was presented to establish that he would not get new

tenants for those apartments next week or next month. If he did get new tenants, the landlord would not suffer the anticipated loss of income he is claiming here. The tenant cannot be held responsible for losses the landlord has not yet incurred, and, in all likelihood will not incur.

- 44. Finally, on this issue, although I accept [REDACTED]'s claim that these 3 residents have given notice and have moved out, no evidence was presented at the hearing to establish that they had moved because of the behaviour of the tenant. Those residents were not called as witnesses and [REDACTED]'s testimony about what they had been complaining to her about amounts to nothing more than hearsay.
- 45. I also find that the landlord is not entitled to the costs [REDACTED] incurred driving to Sunnyside from Gambo. First of all, travelling to a rental unit to deal with tenant-related matters is part of the cost of doing business for a landlord. Furthermore, the tenant cannot be held responsible for the landlord's decision to hire a property manager who lives 2 hours away from the rental property.

Decision

- 46. The landlord's claim for compensation for inconvenience succeeds in the amount of \$680.00, determined as follows:

- Rent for April 2021 \$600.00
- Snow clearing \$80.00

- Total \$680.00

Issue 4: Security Deposit

- 47. [REDACTED] stated that the tenant had paid a security deposit of \$400.00 on 19 January 2021. As the landlord's claim has been successful, he shall retain that security deposit as outlined in this decision and attached order.


Summary of Decision

- 48. The landlord is entitled to the following:
 - A payment of \$280.00, determined as follows:
 - a) Compensation for Inconvenience....\$680.00
 - b) LESS: Security Deposit..... (\$400.00)
 - c) Total.....\$280.00
 - An order for vacant possession of the rented premises,

- The tenant shall also pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

11 June 2021

Date



John R. Cook

Residential Tenancies Tribunal