

Residential Tenancies Tribunal

Decision 20-0149-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:09 am on 21 September 2020 via teleconference.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as “landlord1” and “landlord2”, respectively, participated in the hearing. The respondents, [REDACTED], [REDACTED] and [REDACTED], hereinafter referred to as “tenant1” and “tenant2”, respectively, also participated.

Issues before the Tribunal

3. The landlords are seeking a determination of the validity of a termination notice issued to them on 14 February 2020 and an order for a payment of rent in the amount of \$7000.00.
4. The tenants are seeking an order for a refund of the security deposit in the amount of \$1000.00.

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 sections 10 and 23 of the *Residential Tenancies Act, 2018*.

Issue 1: Validity of Notice
Issue 2: Rent Owning - \$7000.00

Relevant Submissions

The Tenant's Position

7. The tenants and the landlords entered into a 1-year, fixed-term rental agreement on 01 August 2019 and a copy of that executed lease was submitted with the tenants' application. The agreed rent was set at \$1000.00 per month and it is acknowledged in the lease that the tenants had paid a security deposit of \$1000.00.
8. The rental unit is a basement apartment, and the landlords also rent out the unit located directly above the tenants'.
9. Tenant1 stated that since they moved into their apartment, they have experienced many loud disturbances in the middle of the night, coming from the upstairs' unit. She stated that the noise oftentimes starts after midnight and will go on until 2:00 or 3:00 am. She testified that these sorts of disturbances are taking place several times each week.
10. Tenant1 stated that both she and tenant2 are employed and they are required to get up early in the morning to get ready for work. She claimed that the noise coming from the upstairs' unit was so loud that it would often wake them from their sleep.
11. She stated that she first complained to the landlords about this issue on 06 August 2019 and a copy of their WeChat exchanges were submitted at the hearing. She stated that she made about another 10 complaints to the landlords about the noise, but no action was ever taken. Tenant2 also submitted 2 audio recordings as a sample of the noise that could be heard from their apartment.
12. Because of the issues with the noise coming from the upstairs' apartment, the tenants elected to terminate their tenancy early and on 14 February 2020 tenant2 sent the landlords a termination notice by e-mail. 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 29 February 2020. The tenants vacated on that date.

The Landlord's Position

13. Landord2 stated that she had been addressing the tenants' complaints as she had received them and she claimed that she had reminded the residents who lived upstairs that they were not to be making any loud noises after midnight, as per the terms of their lease.

14. She claimed that the upstairs residents told her that they were not making any unusual noises at night and that at most they were either using the bathroom or the shower. Landlord2 claimed that it would not be right to ask them not to use the bathroom at night.
15. Landlord2 also pointed out that she does not live at the rental complex and she complained that the tenants had not produced sufficient proof to establish that the residents in the upstairs apartment had been making too much noise or that they had been interfering with their peaceful enjoyment. It was her view, therefore, that the termination notice issued to her was not valid.
16. Landlord2 argued that if the tenants wished to terminate their rental agreement, they were required to provide the landlords with a written termination notice 2 months prior to the expiration of the lease: 01 August 2020.
17. Landlord2 stated that after the tenants had informed them that they were moving out, she immediately began to advertise the unit for rent on Kijiji and Facebook. She claimed that because of the COVID-19 pandemic, it was very difficult to find new tenants and the unit sat vacant until September 2020.
18. She argued that as the tenants had not provided the landlords with a valid notice of termination, they are responsible for rent for the remaining 5 months of their lease while the unit sat vacant. The landlords are seeking an order for a payment of rent in the amount of \$5000.00 (5 months x \$1000.00 per month).

Analysis

19. Statutory condition 7(b), set out in section 10 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 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.

20. I found the testimony of tenant1 and tenant2 to be believable and compelling. Given that they were residing directly below the apartment from where the noise was coming, they were best positioned to give an accurate, first-hand account of the nature of the noise, when it was taking place, as well as its frequency and duration. Their WeChat evidence also shows that they had complained to the landlords about the issue on numerous occasions since August 2019. I therefore find that it was probable the residents in the upstairs apartment were being loud at night and into the early hours of the morning, as described by the tenants at the hearings.
21. Given that this noise was taking place in the early hours of the mornings, when most people typically sleep, and given that the tenants were required to wake early in the mornings for work, I agree with them that the sort of noise that they described at the hearing must have been interfering with their peaceful enjoyment of their unit. I find, therefore, that they were in a position, on 14 February 2020, to terminate their agreement under section 23 of the *Residential Tenancies Act, 2018*. As their notice meets all the requirements set out in s. 23, it is a valid notice.
22. As the termination notice issued to the landlords was valid, and as the tenants vacated on 29 February 2020, the tenancy ended on that date. Accordingly, the tenants owe no rent to the landlords after 29 February 2020.

Decision

23. The termination notice issued to the landlords on 14 February 2020 is a valid notice.
24. The landlords' claim for a payment of rent does not succeed.

Issue 2: Security Deposit

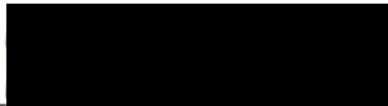
25. There was no dispute that the tenants had paid a security deposit of \$1000.00 and the tenants' evidence shows that this deposit was paid in 2 installments on 02 July and 22 July 2019. As the landlord's claim for rent has not succeeded, they shall refund the full amount of that deposit to the tenants.

Summary of Decision

26. The termination notice issued to the landlords on 14 February 2020 is a valid notice.
27. The tenants' claim for refund of the security deposit succeeds in the amount of \$1000.00.

26 November 2020

Date



John R. Cook
Residential Tenancies Tribunal