

Residential Tenancies Tribunal

Decision 20-0165-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:00 pm on 20 August 2020 via teleconference.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED], hereinafter referred to as “the landlord”. The respondent, [REDACTED], hereinafter referred to as “the tenant”, also participated.

Issues before the Tribunal

3. The landlord is seeking the following:
 - A determination of the validity of 2 termination notices issued to him on 02 March and 04 March 2020,
 - An order for a payment of rent in the amount of \$1300.00,
 - An order for a payment of late fees in the amount of \$75.00, and
 - An order for a payment of “other expenses” totalling \$50.00.
4. The tenant is seeking an order for a refund of the security deposit in the amount of \$487.50.

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, 14, 18, 21 and 23 of the *Residential Tenancies Act, 2018* and William & Rhodes Canadian Law of Landlord and Tenant, (Carswell: Toronto, 1988).

Issue 1: Validity of Termination Notice

Relevant Submissions

The Landlord's Position

7. The landlord stated that he had entered into a 1-year, fixed-term lease with tenant on 01 Mar 2019, and a copy of the executed rental agreement was submitted with his application. The agreed rent was set at \$650.00 per month and it is acknowledged in the lease that the tenant had paid a security deposit of \$487.50.
8. The landlord stated that on 27 February 2020 he had issued the tenant a 3-month termination notice.
9. He stated that 2 days later, on 01 March 2020, he received an e-mail complaint from the tenant about loud banging that had been coming from the upstairs apartment at 2:30 am. In that e-mail, the tenant also makes a general complaint about the consistent noise at the unit and about the smell of smoke coming from the upstairs tenant.
10. The landlord stated that a couple of days later he realized that the tenant had placed a stop-payment order through the payment service for the rent for March 2020 and he contacted her about that matter on 04 March 2020. According to the submitted e-mail exchange submitted by the landlord, he inquires about her rent payment and he also asks whether she had abandoned the rental property.
11. In her response, the tenant states that she had not abandoned the unit but that she would be moving in a few days out of fear of the upstairs tenant. The landlord pointed out that, in that exchange, he informed the tenant that she was required to provide him with a 1-month notice that she was terminating their rental agreement and he pointed out that if she wished to end the tenancy at the end of March 2020, she was required to provide notice on 01 March 2020. He also indicated that the earliest she could terminate the agreement now would be on 30 April 2020, so long as she gave notice on 01 April 2020.
12. The landlord stated that although the tenant moved out of the unit a few days later, he testified that never did receive a proper, 1-month notice from the tenant that she was terminating their rental agreement.
13. The landlord is seeking a declaration that from the Board verifying that her e-mails to him in early March 2020 do not constitute valid termination notices under the *Residential Tenancies Act, 2018*.

The Tenant's Position

14. The tenant stated that on the same day that she had received the termination notice from the landlord, the upstairs tenant had a loud party in his apartment and she was awoken by loud banging in the early hours of the morning. She pointed out that she suffers from Post Traumatic Stress Disorder and that she started to have a panic-attack.
15. She testified that she had contacted the upstairs tenant about the matter, via text-message, and he responded to her in a very aggressive manner. A copy of that text-message was submitted with the landlord's evidence.
16. The tenant stated that she contacted the landlord about the matter on 01 March 2020 and he instructed her to call the police if she felt threatened. She also pointed out that this was not an isolated incident and that these issues had been reoccurring throughout her tenancy. She also complained about the constant smell of cigarette and marijuana smoke coming from that apartment as well as numerous maintenance issues in her apartment that the landlord had failed to address.
17. The tenant also stated that, contrary to the landlord's testimony, she had indeed issued him a termination notice and she pointed to her e-mail from 02 March 2020. In that e-mail she writes that she "will no longer be putting up with this verbal abuse and will be moving out before the end of the month."

Analysis

18. The landlord is right to point out that the tenant had not issued him a proper notice, as required by the *Residential Tenancies Act, 2018*. According to section 18 of that *Act*, as this tenancy was running on a month-to-month basis in March 2020, if the tenant wished to terminate her agreement on 31 March 2020, she was required to give notice sometime prior to 01 March 2020.
19. The tenant did intimate that she was terminating her agreement because of the issues she was having with the occupant of the upstairs apartment and because of the maintenance issues at her apartment, and the *Act* does allow for shorter notice periods in these sorts of special circumstances. For instance, where a tenant believes that her peaceful enjoyment is being unreasonably interfered with, she can issue a 5-day notice under section 23 of the *Act*, or where she believes a rental unit is uninhabitable, an immediate notice can be issued under section 21.
20. However, in all cases, whether a notice is issued under ss. 18, 21 or 23, etc., section 34 of the *Residential Tenancies Act, 2018* also states:

Requirements for notices

34. A notice under this Act shall

- (a) *be in writing in the form prescribed by the minister;*
 - (b) *contain the name and address of the recipient;*
 - (c) *identify the residential premises for which the notice is given;*
and
 - (d) *state the section of this Act under which the notice is given.*
21. On examination of the e-mails sent to the landlord, it looks as if the tenant had issued 2 different notices to the landlord—on 02 March 2020 she writes that she will be moving out before the end of the month, and then on 04 March 2020 she indicates that she will vacate “in the very near future”.
22. But neither of those notices are valid. They are not in the form prescribed by the minister, they do not contain the address of the landlord, they do not identify the rented premises and they do not state the section of the *Residential Tenancies Act, 2018* under which the notices have been issued. Furthermore, neither notice states the exact date that the tenancy will end.

Decision

23. The termination notices issued to the landlord on 02 March and 04 March 2020 are not valid.

Issue 2: Rent - \$1300.00

Relevant Submissions

The Landlord's Position

24. The tenant vacated the rented premises on 07 March 2020. The landlord pointed out that he had not received a proper termination notice from the tenant as required by the *Residential Tenancies Act, 2018* and that he is therefore entitled to a payment of rent in lieu of a proper notice.
25. The landlord reasoned that, on 07 March 2020, the date the tenant vacated, the earliest she could have specified as an effective termination date in a notice would have been 30 April 2020.
26. The landlord stated that the tenant paid no rent for March 2020, even though she was residing at the unit during that time, and he is seeking a payment of \$650.00

for that month. He is also seeking \$650.00 for April 2020 as the tenant had not given him a proper, 1-month notice as required by the *Act*.

The Tenant's Position

27. The tenant stated that the landlord had informed her that she was required to provide him with a 30-day notice that she was terminating their rental agreement. She claimed that she had met that requirement as she informed him on 02 March 2020 that she would be moving at the end of the month. She pointed out that as March contains 31 days, a notice on 02 March 2020 does meet the 30-day requirement.
28. The tenant did acknowledge that she had not paid rent for March 2020. However, she argued that she should not be required to pay rent for that month as the landlord had not been properly maintaining the property and he refused to carry out the repairs she had been requesting. She also pointed out that he had not addressed the issue with the smell of smoke at the unit or the aggressive behaviour of the tenant in the upstairs unit.
29. Regarding rent for April 2020, she pointed out that she was not residing at the unit during that month.

Analysis

30. I have determined in the previous section that the tenant had not given the landlord a proper termination notice, as required by the *Residential Tenancies Act, 2018*.
31. According to section 31 of this *Act*:

Abandonment of residential premises by tenant

31. (2) *A tenant is considered to have abandoned a residential premises where*

- (a) the tenant has vacated the residential premises;*
- (b) the rental agreement is not terminated in accordance with this Act or the rental agreement; and*
- (c) rent is overdue.*

32. Where a tenant abandons residential premises, a landlord is entitled to compensation for any damages caused by the abandonment, including compensation for any loss of rental income, with the following caveat:

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:

...

4. Mitigation on Abandonment - Where the tenant abandons the residential premises, the landlord shall mitigate damages that may be caused by the abandonment to the extent that a party to a contract is required by law to mitigate damages.

33. The landlord stated that after the tenant had vacated, he was instructed by the homeowner not to re-list the unit for rent and the landlord stated that he had made no efforts to put new tenants in place. He also stated that he is no longer managing that property, and from the copies of the e-mails he had submitted at the hearing, it seems as though the homeowner intended to put the unit up for sale.
34. I have to conclude, therefore, that even though the unit was abandoned by the tenant on 07 March 2020, the landlord had not lived up to his statutory obligations to mitigate any damages caused by that abandonment. He made no efforts to recoup his lost rental income by attempting to re-rent the unit and according to established case law, placing a rental property up for sale does not satisfy the duty to mitigate these sorts of damages. E.g. in William & Rhodes Canadian Law of Landlord and Tenant, when discussing the issue of mitigation of damages, the authors point out that:

In Canadian Medical Laboratories Ltd. v. Stabile (1992), 25 R.P.R (2d) 106 (Ont. Gen. Div.), it was held that sale of the property by the landlord does not satisfy the duty to mitigate as it ends the landlord's ability to re-rent the demised premises.

35. As the tenant had use and enjoyment of premises up 07 March 2020, I find that the landlord is entitled to a payment of rent in the amount of \$146.77 (\$650.00 for March 2020 ÷ 31 days x 7 days).

Decision

36. The landlord's claim for a payment of rent succeeds in the amount of \$146.77.

Issue 3: Late fees - \$75.00

Relevant Submissions

37. The landlord has assessed late fees in the amount of \$75.00.

Analysis

38. Section 15.(1) of the *Residential Tenancies Act, 2018* states:

Fee for failure to pay rent

15. (1) *Where a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister.*

39. The minister has set the following fees:

Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed:

(a) \$5.00 for the first day the rent is in arrears, and

(b) \$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00.

Decision

40. As the tenant has been in arrears since 02 March 2020, the landlord is entitled to an award for the maximum fee of \$75.00 set by the minister.

Issue 4: “Other” Expenses - \$50.00

Relevant Submissions

The Landlord’s Position

41. The landlord testified that the tenant had put a stop-payment on her rent for March 2020.

42. He stated that as a part of their pre-authorized debit agreement, a copy of which was submitted with his application, the tenant had agreed to pay to him a fee of \$50.00 in the event that a debit transaction is cancelled for the reason of non-sufficient funds (NSF).

The Tenant's Position

43. The tenant pointed to the Rules and Regulations addendum to the lease in which it states that the landlord would only charge \$25.00 for an NSF cheque.

Analysis

44. Both the landlord and tenant are correct here. But I agree with the landlord that as it was the recurring debit payment that had been stopped, and not a cheque which had been returned, the tenant owes the landlord \$50.00.

Decision

45. The landlord's claim for NSF fees succeeds in the amount of \$50.00.

Issue 5: Security Deposit

46. The tenant paid a security deposit of \$487.50 on 19 February 2019 and receipt of that deposit is acknowledged in the submitted lease. As the landlord's claim has been partially successful, he shall retain \$271.77 of that deposit and return the remainder to the tenants, as follows:

- a) Security Deposit.....\$487.50
- b) LESS: Rent (\$146.77)
- c) LESS: Late Fees (\$75.00)
- d) LESS: NSF Fees (\$50.00)

- e) Total Owing to Tenant.....\$215.73

23 October 2020

Date



John R. Cook
Residential Tenancies Tribunal