

Residential Tenancies Tribunal

Application 2024-0337-NL & 2024-0650-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 9-September-2024 at 9:16 am.
2. The applicant, [REDACTED], hereinafter referred to as the tenant, attended via teleconference.
3. The respondent, [REDACTED], hereinafter referred to as the landlord, attended via teleconference.
4. A witness, [REDACTED], also attended via teleconference on behalf of the tenant.

Preliminary Matters

5. Both parties acknowledged that they received notice of the other party's application more than ten days before the start of the hearing.

Issues before the Tribunal

6. Is the termination notice dated 27-February-2024 valid?
7. Should the tenant's claim for a refund of rent succeed?
8. Should the landlord's claim for damages succeed?
9. What is the proper disposition of the security deposit?

Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act*, 2018 (the *Act*).
11. Also considered and referred to in this decision are sections 18(2), 18(9), and 34 of the *Act*, reproduced below:

Notice of termination of rental agreement

18. ...

(2) A landlord shall give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises

- (a) not less than 4 weeks before the end of a rental period where the residential premises is rented from week to week;
- (b) not less than 3 months before the end of a rental period where the residential premises is rented from month to month; and
- (c) not less than 3 months before the end of the term where the residential premises is rented for a fixed term.

...

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

- (a) be signed by the person providing the notice;
- (b) be given not later than the first day of a rental period;
- (c) state the date, which shall be the last day of a rental period, 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
- (d) be served in accordance with section 35.

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.

Issue 1: Validity

Tenant's Position

12. The tenant contests the validity of a termination notice dated 29-February-2024. She states that the landlord told her he was selling the house, and then changed his mind. She also said there was mold in the house.

Landlord's Position

13. The landlord submitted that the termination notice is valid.

Analysis

14. To be valid, a termination notice must comply with all relevant sections of the *Act*. The tenant submitted a copy of the notice (T#1).
15. T#1 is a termination notice in writing in the form prescribed by the minister. It contains the name and address of the recipient. It identifies the residential premises which it regards. It states the section of the *Act* it was given under. It therefore complies under with s. 34 of the *Act*.
16. T#1 was signed by a representative of the landlord who provided it. It was given three days before the first day of the relevant rental period. It states the date on which the residential tenancy agreement is to terminate, and that date is the last day of a rental period. It was served on the tenant personally in accordance with s. 35(1)(a) of the *Act*. T#1 therefore complies with s. 18(9) of the *Act*.
17. The residential tenancy agreement is a month-to-month. T#1 was issued on 27-February-2024 and gives a move out date of 31-May-2024. T#1 provides 3 full months' notice as required by s. 18(2)(b) of the *Act*.
18. T#1 complies with all relevant sections of the *Act* and is therefore valid.

Issue 2: Refund of Rent

Tenant's Position

19. The tenant seeks a refund of rent in the amount \$2598.00 which represents one third of the rent for the time period from April 2023 to September 2023. She says this is compensation for the loss of use of the basement for that time period. Parties agree that there was a flood in April 2023 due to a malfunctioning pipe, and that this problem was not completely fixed until September. She says this deprived her of the use of the basement in its entirety, which represented about one third of the area of the premises.

Landlord's Position

20. The landlord acknowledges the flood and agrees that the damage should not have taken as long to repair as it did in the end. However, he disputes liability on the basis that he took all reasonable steps to ensure the issue was remedied as fast as possible. He submits he was legally obligated as part of a condominium agreement to rely on the condominium corporation's contractor. He testified that he had diligently pursued them until the work was finished. He also stated that he reduced the rent owed by \$300 to compensate the tenants for the inconvenience, and that this inconvenience also served as part of the reason he decided not to raise the rent. He disagrees with the tenant's timeline and says the work concluded in June, not September. He also states that the tenant was only totally excluded from the basement for three days.

Analysis

21. The tenant's evidence as to any damage suffered was minimal. No documentary evidence was submitted showing the extent of the flooding or how it impacted the property. The tenant's testimony as to how the damage affected her was vague and unclear. She and her witness testified that certain items were damaged by the flooding but provided no documentary evidence showing these items, the damage, or the cost of replacement.
22. The landlord's testimony as to the extent of the damage and its impact was cogent, coherent, clear, and internally consistent. To the extent his testimony conflicts with the tenants, I accept his account.
23. Considering the evidence in its totality, I find that the tenant has failed to establish on a balance of probabilities that she suffered a loss as a result of the landlord violating the rental agreement or the *Act*.
24. The tenant's claim for compensation for damages fails.

Issue 3: Damages

25. The landlord claims for compensation of damages in the amount of \$5264.71 divided amongst 71 items. For greater clarity and brevity, I will deal with the items by separating them into groups below. In accordance with the Residential Tenancies Program Policy and Procedure Guide policy 09-003, when a landlord seeks compensation for damages, they must provide sufficient evidence to establish that the property was damaged, the extent of the damage, that the damage was caused by a wilful or negligent act of the tenant, and the cost of repairing or replacing the damage. This should include documentary evidence when possible.
26. First, the landlord claims for the cost of cleaning the premises. He testified that the tenant left the premises in a significantly unclean state. He said that he decided it would be prudent to hire a cleaning company and instruct them to do a one day cursory "single wipe" initial cleanup to begin the project and that he did the remainder of the cleaning through his own labour to mitigate costs.
27. The landlord provided extensive photographic evidence of the condition of the premises. These collections of photos are labelled LL#1-8, LL#10-13, and LL#15-19. These photos indeed show the premises in an unclean state. The landlord testified that much of the cleaning was necessary because the tenant and/or a guest had been smoking inside the premises, and that this was evidenced by yellow nicotine stains throughout the premises. Many of these yellow stains are visible in the photos. The landlord has also taken photos after they applied cloths and cleaners to the yellow stains, so that the residue is clearly visible. LL#17 shows cigarette butts left in a carpet covered in burn marks.
28. The tenant and her witness denied leaving the premises in an unclean condition and deny smoking in the premises. The witness repeatedly asserted that the landlord has no expertise in nicotine. A person need not have specialized expert knowledge to recognize

nicotine stains. The tenant's witness also asserted that the person hired to clean the carpets was not a professional carpet cleaner, but no reasoning for this was provided.

29. In relation to the unclean state of the premises, the landlord claims \$329.00 for the cost of the cleaning company he hired and \$494.50 for self-labour, representing 21.5 hours at the rate of \$23/hour, as well as \$327.75 for carpet cleaning and \$121.37 for cleaning supplies. The maximum amount a landlord can claim for self-labour is set by policy at minimum wage+\$8/hour or \$23.60/hour. A receipt was provided for the cleaning company in the amount of \$329.00 (LL#20). A receipt was provided from the carpet cleaning company in the amount of \$327.75 (LL#23). The landlord provided an activity log which details how the hours of self-labour were spent (LL#21-LL#22). Receipts were provided for cleaning supplies totaling \$106.37 (LL#25 pages 3-5).
30. Considering the evidence in its totality, I am satisfied that the landlord has met the evidentiary burden and proven on a balance of probabilities that the tenants left the premises in an unclean state, the extent of that uncleanliness, and the cost of cleaning. A tenant has a duty to maintain the premises in a clean condition and return the property in a clean condition. Depreciation is not relevant to this issue as cleanliness is an ongoing concern. This portion of the landlord's claim succeeds in the amount of \$1257.62.
31. The landlord claims \$524.20 for the replacement of damaged carpet. This was the carpet in the upstairs 'spare' bedroom, whereas the previous claim related to carpet in the upstairs hallway, stairs, and master bedroom. The landlord testified that the carpet had extensive burns and needed to be replaced. The landlord testified that this carpet had originally been installed about 10 years prior. As the life expectancy of carpet is 8-10 years, the carpet was due to be replaced and therefore the landlord cannot recover the cost of the replacement due to depreciation.
32. The landlord seeks \$80.00 in services and \$40.25 for lawn care. He testified that the tenants did not maintain the lawn as required by part 11 of the rental agreement as signed by the tenant. Photos in LL#11 show the overgrown lawn. LL#24 shows an e-transfer receipt for \$80.00 for lawn mowing services. LL#25 shows the receipt for grass seed in the amount of \$80.49. The landlord explained that he used it for two properties, one of which is unrelated to this claim.
33. The tenant's witness denies that it is a tenant's responsibility to maintain the lawn. He testified that in previous tenancies, his landlords had done the lawn care. The requirement that a tenant perform lawn care is an optional provision in rental agreements in this province. The agreement signed by the tenant specifies she is responsible for lawn care.
34. This portion of the landlord's claim succeeds in the amount of \$120.25.
35. The landlord claims for \$575.00 in self-labour spent painting, which represents 25 hours at \$23/hour, as well as \$242.12 in paint. He testified that this was necessary in the kitchen, dining room, living room, the upper stairway, the upstairs hall, the master bedroom, the bathroom, the 'spare' bedroom upstairs, the basement bedroom, the lower stairway, and the recreation room. He testified that this was necessary both due to the

damage from smoking and some other chips and holes in the walls. Receipts were provided for the paint (LL#25, pages 2-3).

36. I accept that the painting was necessary due to damage from the cigarette smoking, which was contrary to the rental agreement. Depreciation must be considered. The landlord testified that the interior of the premises was previously painted in the spring of 2021, 3 years prior. Depreciation is calculated by multiplying the cost of the replacement/repair by the expected remaining lifespan divided by the total expected lifespan. As the expected lifespan of interior paint is 15 years, this results in a total of $\$817.12 * (12 \text{ years} / 15 \text{ years}) = \653.70 . This portion of the landlord's claim succeeds in the amount of \$653.70.
37. The landlord claims \$19.52 for a damaged door knob. A photo of the damaged door knob was provided as LL#18(11). A receipt was provided for replacement (LL#25 page 5).
38. The tenant denied causing any damages.
39. Considering the evidence in its totality, I accept that the tenant caused this damage and that the cost of replacement was warranted. As a doorknob has a life expectancy of a lifetime, depreciation is not an issue. This portion of the landlord's claim succeeds in the amount of \$19.52.
40. The landlord claims \$12.72 for the replacement of damaged wall plates. He testified that the wall plates behind each push light switch had been cracked during the tenancy, as if someone had struck them with an excessive amount of force. These damaged plates can be seen in LL#10(6) and LL#6(1). Receipts have been included in LL#25.
41. Considering the evidence in its totality, I accept that the tenant caused this damage and that the cost of replacement was warranted. This portion of the landlord's claim succeeds in the amount of \$12.72.
42. The landlord claims \$132.89 for damage done to doors. This represents \$6.08 for doorstops, \$7.81 in glue, \$57.00 for other materials, and \$62.00 in labour, representing 4 hours of self-labour. The damage to the doors can be seen in LL#18(11), LL#18(15), LL#18(16), LL#18(18), LL#1(5), LL#1(23), and LL#1(24). The receipts can be seen in LL#26 and LL#25 page 5.
43. Considering the evidence in its totality, I accept that the tenant caused this damage and that the cost of replacement was warranted. As the life expectancy of these doors is a lifetime, depreciation is not in issue. This portion of the landlord's claim succeeds in the amount of \$132.89.
44. The landlord claims \$50 for a trip to the waste disposal facility. For a guideline on the approximate costs accrued traveling in one's own motor vehicle, I look to the Government of Newfoundland and Labrador Automobile Reimbursement rates. The basic rate is \$0.3974/km and the approximate distance is 17 km one way. $17 \text{ km} * \$0.3974/\text{km} = \6.76 . This portion of the landlord's claim succeeds in the amount of \$6.76.

45. The landlord claims \$38.13 for damaged blinds. He testified that the blinds were ten years old or more. As the life expectancy for blinds is ten years at the maximum, the landlord is unable to recover this cost due to depreciation. This portion of the landlord's claim fails.
46. The landlord claims \$31.50 for missing or damaged light bulbs. Light bulbs are part of the normal cost of doing business and are therefore not compensable. This portion of the landlord's claim fails.
47. The landlord claims \$46 for 2 hours of self-labour spent in 2022 unclogging a drain due to alleged misuse on behalf of the tenants. He testified that excessive grease had been poured down the kitchen drain, causing a blockage.
48. The tenants did not refute this claim.
49. This portion of the landlord's claim succeeds in the amount of \$46.00.
50. The landlord claims for several items at a nominal value – e.g., \$50 for damage to the kitchen floor. These damages do not represent actual expenditure taken or estimated in repairing the premises but instead offer a token number as an acknowledgement that the rental agreement was violated. This tribunal is compensatory in nature and seeks only to grant awards directly flowing from damages suffered, in the amount suffered. These portions of the landlord's claim fail.
51. Finally, the landlord claims \$1733.33 representing a pro-rated monthly rent of \$2000.00 for the 27 days he testified that he was unable to rent the premises due to the tenant's damages. A rental agreement was provided (LL#27) signed on 27-June-2024 with a monthly rent of \$2000/month.
52. Based on the totality of the evidence, I accept that the landlord was unable to rent the property for 26 days of June (the 27th day being the day that the new tenancy was stated to begin) due to the tenant's violation of the rental agreement in leaving the premises in a damaged and unclean state.
53. A daily rate must be calculated. The correct formula for determining a daily rate is found by multiplying the monthly rent by the 12 months of the year and dividing by the 366 days of this year. In this case, $\$2000/\text{month} * 12 \text{ months} / 366 \text{ day} = \sim \65.57 . Multiplying this by the 26 days of June that the landlord was unable to rent the property yields a total of \$1704.92.
54. This portion of the landlord's claim succeeds in the amount of \$1704.92.
55. The landlord's claim for damages succeeds in the amount of \$3954.38.

Issue 4: Security Deposit

56. The landlord is owed moneys and is therefore entitled to apply the security deposit against the sum owed. In this case, a \$700 security deposit was received in 2022.

57. S. 14(7) of the Act states that a landlord shall credit interest to the tenant on the full amount or value of the security deposit, at the rate prescribed by the regulations, during the time the security deposit is held by the landlord. The regulations prescribed an interest rate of 0% during the years 2022 and 2023, and a 1% simple cumulative interest rate for the year of 2024. Calculated to the date of the hearing, the interest accrued is \$4.86.

Decision

58. The termination notice dated 27-February-2024 is valid.

59. The tenant's claim for a refund of rent fails.

60. The landlord's claim for damages succeeds in the amount of \$3954.38.

61. The landlord may apply the security deposit and interest, valued at \$704.86, against the sum owed.

62. The landlord was successful in his claim and is therefore entitled to have his reasonable hearing expenses compensated. In this case, his hearing expenses were limited to the \$20 application fee.

Summary of Decision

63. The termination notice dated 27-February-2024 is valid.

64. The tenant shall pay to the landlord \$3269.52 as follows:

Damages.....	\$3954.38
Less Security Deposit.....	(\$704.86)
Hearing Expenses.....	\$20.00
Total.....	\$3269.52

15-October-2024

Date


Seren Cahill
Residential Tenancies Office