

Residential Tenancies Tribunal

Application 2024-0566-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 10-September-2024 at 9:07 am.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as the landlords, attended via teleconference.
3. The respondent, [REDACTED], hereinafter referred to as the tenant, attended via teleconference and was represented at the hearing by her counsel [REDACTED], who also attended via teleconference.

Preliminary Matters

4. The respondent acknowledged they received notice of this hearing more than ten days before the hearing date.

Issues before the Tribunal

5. Is the termination notice dated 26-April-2024 valid?
6. Should the landlord's claim for the return of possessions succeed?
7. Should the landlord's claim for damages succeed?
8. Should the landlord's claim for unpaid rent, utilities, and late fees 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*).

Issue 1: Termination Notice

Landlord's Position

11. The landlord testified that the tenant canceled the rental agreement via a text message on 26-April-2024 at 3:36 pm. She said that this text message stated "I am advising you that I am leaving the apartment at 20 a as soon as possible. There is absolutely no damage I have done here, so you can keep the \$750 damage deposit, and I will also e-transfer to you \$250. Totalling \$1000. Consider that my rent for the month of May and notice to vacate" [names omitted]. They submit that this is an invalid notice.

Tenant's Position

12. Counsel for the tenant did not dispute the authenticity of the notice but submitted that in the circumstances it was more than adequate notice. They submitted that the tenant had grounds for early termination under s. 21 as the rental premises were uninhabitable.

Analysis

13. To be valid, a termination notice must comply with all relevant sections of the *Act*. S. 34 of the *Act* reads as follows:

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.

14. In the present case, the text message does not state the section of the *Act* under which the notice was given. This is sufficient to render it invalid as a notice under s. 34(d). The s. 34 requirements apply regardless of whether the notice is for termination with or without cause.
15. The notice dated 26-April-2024 is invalid.

Issue 2: Return of Possessions

Landlord's Position

16. The landlords claim for the return of possessions which they allege the tenant removed from the premises. These items are a stove they say is valued at \$977.49 and a number of window blinds they say are valued at \$553.43. They testified that the tenant replaced these items during the tenancy without their permission or knowledge. They say they were missing five sets of blinds, and that the blinds and stove were all ten years or more old.

Tenant's Position

17. The tenant acknowledges replacing the stove and the blinds. However, she says the items needed replacement and that her actions in replacing them constituted an improvement which benefited the landlords. She says the original items were at the end of their lifespan and she disposed of them accordingly. The tenant also provided a sworn affidavit from a witness who testified that the blinds were covered in mold and mildew stains (T#2 paras 5-6).

Analysis

18. Under s. 47(1)(g) of the *Act*, the director may, after hearing an application, make an order directing a tenant to deliver to a landlord possession of personal property taken in contravention of this Act or the rental agreement or to compensate a landlord for the value of the personal property taken.
19. When assessing the value of property, depreciation must be considered. Physical objects deteriorate over time as a result of normal wear and tear, and they have a finite lifespan. As objects deteriorate, their value depreciates. This tribunal uses a straight-line depreciation calculation when applying depreciation. In other words, the current or expected value of an object is found by multiplying the value of replacement or repair by the number of years remaining in the expected lifespan of the object divided by the total expected lifespan.
20. Window blinds have a maximum life expectancy of between five to ten years,¹ depending on the exact make and model as well as environmental conditions. The landlords said that some of the blinds were wood and some of them were what are called mini blinds. Neither of these types would be expected to have particularly long lifespans. The landlords presented no evidence showing the blinds before the tenant moved in.
21. Had the tenant not replaced the blinds, the blinds remaining in the premises would have been overdue for replacement. By the depreciation calculations above, their value would be zero. The landlord thus has not demonstrated that they have lost anything of value due to the tenant's actions regarding the blinds.
22. Regarding the stove, the landlords testified that one of them attended the property at one point as the tenant had complained about the noise of a fan. It was at this time they examined the stove as the potential source of the problem. They testified that at this point they were not aware the stove had been replaced but, in retrospect, are "100%

¹ (2024, May 2). *How frequently should you replace your window blinds?* Talbot and Son Blinds. <https://www.talbots.im/how-often-should-you-change-your-blinds/>

See also:

- Albo, S. (2022, October 6). *Signs It's time to replace your window blinds.* Allure Window Treatments. <https://www.allurewindowtreatments.com/signs-that-you-need-to-say-goodbye-to-your-old-worn-out-window-blinds/>
- Elmhurst, N. (2024, May 22). *7 signs it's time to replace your window treatments.* Stoneside. <https://www.stoneside.com/resources/articles/7-signs-it-is-time-to-replace-your-window-treatments>

sure" this was the replacement and not the original. He testified that the stove is not as good a model as the one it replaced, but did not elaborate aside from the brand name and that he had to disconnect the stove's timer to fix the noise issue. On cross examination, the landlord admitted that the replacement stove was currently being used by the new tenant.

23. The landlords provided pictures of the original stove (LL#1, pages 34 and 48), though these appear to be low resolution copies of original photos and are of limited use.
24. The tenant's provided a sworn affidavit stating that the stove had broken sometime after the 1st of September 2023 and she replaced it the first week of October 2023. She stated that the landlord had previously refused to replace the stove, although it was in bad repair, as it still worked. The tenant also provided photos of the original stove and the replacement, (T#1, page 16, Exhibit A). While these photos are of higher resolution than the landlords they are zoomed in to the point where I find they demonstrate nothing more than the cleanliness of the two stoves.
25. It is agreed by the parties that the tenant removed and replaced the stove without the permission of the landlords. However, considering the evidence in its totality, I do not find on a balance of probabilities that in doing so the tenant caused the landlord any real harm. I accept the tenant's evidence that she replaced the stove because it needed to be replaced. It may be said that the tenant did not have the right to replace the stove, and ought to have submitted a tenant's notice of repairs instead. This is not sufficient to justify a claim for compensation for damages. For such a claim to succeed, a landlord must provide sufficient evidence to demonstrate that the tenant's actions caused them actual financial loss. That did not happen here.
26. This portion of the landlords' claims fails.

Issue 3: Damages

27. The landlords claim for damages in the amount of \$5808.63 divided amongst 6 major items: (a) bathroom flooring, (b) painting, (c) refinishing cabinets, (d) a fire blanket, (e) light fixtures, and (f) living room flooring. For clarity, each item will be dealt with separately below, followed by a (g) summary.
28. At the outset, it should be noted that a landlord's claim for damages is discussed in the Residential Tenancies Program Policy and Procedure Guide policy 09-003. In accordance with that policy, landlords seeking to recover damages must provide sufficient evidence to prove that their property was damaged by the wilful or negligent act of a tenant or a person they allowed on the premises, the extent of the damage, and the cost of replacement or repair as necessary. Where possible this should include documentary evidence such as photographs, videos, receipts, quotes, etc. A claim will fail if there is insufficient evidence to support it.

A. Bathroom Flooring

29. The landlords claim \$516.53 for damage they submit was caused by the tenant to the bathroom floor. This total includes the cost of materials including the flooring, toilet seal, acrylic latex caulking, moulding, base board, and labour.
30. Parties agree that during the tenancy, the tenant complained to the landlords in March 2024 about suspected mold issues in relation to the bathroom, partially due to discolouration in the flooring around the toilet. The landlord attended the premises shortly thereafter and examined the bathroom floor and said there was no mold issue. The tenant asked again later the same month, apparently in response to a mushroom growth she had found by the toilet and was assured there was no mold issue. Unable to accept this response, she asked the landlord to examine underneath the flooring. When he refused, she had a person cut a small piece out of the floor next to the toilet to check beneath without the landlords' knowledge or permission.
31. The landlords submitted that because the tenant cut into the floor, it had to be redone. They said in relation to the tenant's previous complaints, they had done their due diligence addressing the issue and had concluded there was no mold growth or other issues which needed to be addressed. They submitted a colour photo of the cut section (LL#1 page 31). The landlords testified that in replacing the flooring, they discovered there was rot in the subfloor underneath the toilet, which they then replaced.
32. The tenant's affidavit (T#1) speaks to her experience of the alleged issues with the bathroom. She also provides pictures of the stain on the bathroom floor that first caused her concern (Exhibit H, T#1 pages 46-47), the mushroom growth she says grew from beneath the toilet (Exhibit I, T#1 page 49-50), and the state of the bathroom floor generally (Exhibit O, T#1 pages 77-84).
33. There was no allegation that the rot in the bathroom flooring was caused by the tenant, and the landlords rightfully acknowledge that the tenant should not be held liable for this rot. On cross examination, it was put to the landlord that the floor needed to be replaced in order to repair the damaged subfloor. The landlord replied that because the floor was cut, he could see the rot, because he could see the rot this forced him to repair it. The logical implication of this response is that the landlord is suggesting the tenant should be responsible for the repair of the floor because, had the tenant not cut into the floor, he would have been unaware of the need for repairs and would not have expended the cost. This is a troubling sentiment. It seems to imply that the landlord would have preferred to be unaware of a structural issue in the property. This extra context casts doubt on the landlords' assertions that they performed their due diligence in investigating the tenant's complaints.
34. If the tenant had not cut into the floor, the evidence is clear that the rot likely would have continued to go unnoticed. Rot cannot be left untreated. Unaddressed rot can spread and severely endanger a property. It is therefore a logical conclusion that the tenant's actions in exposing this rot earlier were to the landlords' advantage and saved them from an unfortunate surprise in the future.
35. In any event, the tenant's actions exposed a problem that needed to be addressed. The replacement of the subfloor could not be performed without replacing the floor above it.

The landlords needed to undertake this cost, whether they were aware of this need. The tenant's actions did not, therefore, cause the landlord a loss.

36. This portion of the landlord's claim fails.

B. Painting

37. The landlords claim \$1069.22 for painting. This consists of material cost in trim paint, primer, and paint guard, as well as 38 hours of labour. The landlords testified that this was for the painting of the bedrooms and the doors. They agree that they gave the tenant permission to paint but assert that this was subject to certain conditions, including that the paint job be done neatly. They say the tenant painted these areas in a way which did not reach their standards for neatness. Some photos were provided of these rooms (LL#1 page 31-32 and 47). These photos are of limited use but, with no disrespect intended to the tenant, they do show signs that an unsteady hand or inexpert technique was used around trim, as there are multiple places where the wall colour infringes onto the trim and vice versa. The landlords also say the tenant used an unapproved colour for the doors and trim. The landlords testified that those areas were last previously painted about ten years ago.
38. The tenant's evidence was that she had permission to paint and believes she did an excellent job. The tenant questions the amount of time the landlord put into labour, and her counsel highlighted some inconsistencies in his evidence regarding the time put in.
39. The landlords specified that they used Benjamin Moore brand Satin/Pearl paint, an acrylic latex paint. This type of paint has a maximum life expectancy of 10 years.²
40. Even if the tenant had not touched the paint beyond normal wear and tear, the paint would be due for replacement. As the time since the original paint job is equal to or greater than the expected life expectancy of the paint, the landlord is unable to recover the cost of painting due to the effect of depreciation.
41. This portion of the landlord's claim fails.

C. Refinishing Cabinets

42. The landlords claim \$968.26 to refinish kitchen cabinets. This includes \$48.26 in materials and \$920.00 in labour. Some photos of the cabinets were provided (LL#1 pages 12, 23, 32, and 44). The landlords claim that the tenant refinished the cabinets without their permission and did so improperly. They say that the tenant replaced the hinges and handles of the cabinets. They testified that the staining was uneven. I do observe in the photos one small area near the floor the stain does not cover. They speculate that the stain used may have been varathane, which is unsuitable for these

² Citrus Paint & Supplies, (2023, August 3). How Long Does Benjamin Moore Paint Last? | Citrus Paint & Supplies. Citrus Paint & Supplies. <https://citruspaint.com/how-long-does-benjamin-moore-paint-last/>
See also:

Elite Trade Painting. (2020, June 26). Paints, primers, stains, and coatings dry times and Longevity — elite trade painting. <https://elitetradepainting.com/resources/paints-primers-stains-coatings-dry-time-longevity/>

types of cabinets. They testified that they have not yet restored the cabinets but the labour cost listed above represents their best estimate of how long the work will take. The landlords' only photos of the cabinets before the tenancy are very small and are of poor resolution.

43. The tenant says that the cabinets were in a state of disrepair and provides as additional evidence of this Exhibit C and G (T#1 pages 33-37 and 43-44). The tenant says she discussed the cabinets with the landlord and was told not to paint the cabinets but was not told she could not refinish them. She agrees that she sanded and re-stained the cabinets and applied a topcoat seal. She denies using varathane. She agrees that she replaced the handles on the cabinets and says that she did so because several of the ceramic handles were broken off. She testified that as cracked ceramic, it was a potential danger and could cut hands. She says that as the landlord had told her he would not be replacing the handles, she decided to do the work herself. She included before and after photos of the handles as Exhibit B (T#1 pages 18-32).
44. The tenant's evidence, supported by photographs, is that the cabinets were in very poor shape prior to her work on them. I can observe that much of the finish appears to have flaked off. They have the appearance of cabinets which have not been retouched in many years. They appear to be in much better shape after the tenant's work. While the tenant's work may have been imperfect, it nevertheless appears to have been a significant improvement.
45. Considering the evidence in its totality, I find on a balance of probabilities tenant's actions did not damage the landlord's cabinets.

D. Fire Blanket

46. The landlords claim \$45.99 for a Wucgea Fire Blanket they say was removed from the premises. The tenant's counsel acknowledged that the item was removed from the premises and indicated he has possession of it and is willing to return it. At the time of the hearing, he noted it was in his office.

E. Light Fixtures

47. The landlords claim \$301.27 for light fixtures which they say the tenant replaced without their permission. This total includes \$226.26 in materials and \$92.00 in labour (note that this totals \$318.26 but I presume this is a simple math error). They testified that the tenant replaced light fixtures in four areas of the house without their permission. Some photos of the replaced light fixtures in LL#1 page 48.
48. The tenant acknowledges she changed the light fixture in the kitchen. She says she took the fixture down to clean it and discovered that not only was it stained but that there were burn marks and frayed wiring, evidence of a fire hazard (see Exhibits K and L, T#1 pages 55-62). She says she changed the light fixture and told the landlord afterwards. The landlords acknowledge this conversation.
49. I can clearly see the frayed wires and burn marks in the photos provided. I accept that the kitchen light fixture needed to be replaced. It is difficult to understand how the tenant

would owe the landlord the cost of a new light fixture for the kitchen when they acknowledge she had already provided a replacement for a faulty fixture from her own pocket. I note that regarding the other fixtures, the only documentary evidence included were three photos of light fixtures. There is no evidence suggesting these were in any way inferior to the fixtures they replaced, if indeed they were replaced. The landlord has failed to provide sufficient evidence to establish that they suffered any loss of value due to the tenant's actions.

50. This portion of the landlord's claim fails.

F. Living Room Flooring

51. The landlords claim for a portion of the \$1376.44 cost for the replacement of the laminate flooring in the living room of the premises. A quote was provided (LL#2 page 15). They testified that parts of the floor were chipped, and damage had been hidden by someone using a black permanent marker. The landlords acknowledged that there were scratches in the floor before the tenancy. They say they spoke to the previous tenant who told them where these previous scratches were, but that "these were not what she did." Photos of these scratches were provided (LL#1, pages 47-48). On cross examination, the landlord admitted that he "don't have any physical evidence that she made the scratches, and I don't have any evidence that she didn't make the scratches."
52. The tenant denies scratching the living room flooring. She provided photographs from when she moved in as Exhibit M (T#1 pages 70-72). She says also that the flooring throughout the apartment was scratched, damaged, and badly needed repair. She denies trying to cover up scratches with a black marker.
53. The landlords have admitted that there were marks left on the floor by previous tenants. They suggested they received the knowledge of what was left by the previous tenant from said previous tenant. They did not claim firsthand knowledge of which scratches were on the floor before the tenant moved in. There was no evidence that they documented the state of the floor before the tenancy. There was no sworn testimony from the previous tenant provided to this tribunal, through a witness or by affidavit. The landlords have not provided sufficient evidence to establish on a balance of probabilities that the damage was caused by the tenant.
54. This portion of the landlords' claim fails.

G. Summary

55. The landlords' claim for damages fails, save with respect to the Wucgea Fire Blanket which will be returned to them.

Issue 4: Unpaid Rent, Utilities, and Late Fees

Landlords' Position

56. The landlords claim rent in the amount of \$1000, utilities in the amount of \$86.30, and late fees in the amount of \$75 for the month of May. They acknowledge that the tenant

moved out in late April. The amount claimed is in lieu of proper notice. They say the premises could not be re-rented immediately due to damages done by the tenant, which required two weeks to repair. They said the premises were vacant all of May and rented in June.

Tenant's Position

57. The tenant submits that the premises were uninhabitable and that they were therefore entitled to terminate the rental agreement without notice.

Analysis

58. As I have already determined that the damages were not caused by the tenant, the landlord is unable to recover rent for the time period during which they performed repairs on the premises. Regardless of the tenant's actions, they would have needed to leave the premises vacant to effect the repairs. The landlords therefore cannot recover rent for the first two weeks of May.
59. In the absence of a valid termination notice, the landlord can recover rent for the remaining 17 days of May. A daily rate must be calculated. The correct formula for determining a daily rate is multiplying the monthly rent by the number of months of the year and dividing by the 366 days of this year. In this case, the formula is $\$1000/\text{month} * 12 \text{ months} / 366 \text{ days} = \sim \$32.79/\text{day}$. Multiplying this by the 17 days of May for which the landlord can recover yields a total of \$557.38.
60. The utility bill for May was \$86.05. Multiplying this by the number of days for which the landlord can recover divided by the total number of days in May yields a total recoverable amount of unpaid utilities of \$47.19.
61. In respect of late fees, it should be noted that the tenant initially proposed to pay rent for the month of May. To do so, she proposed that the landlord retain the \$750 security deposit. She also says she left an additional \$250 in cash on the premises for the remainder of the month's rent, though the landlords dispute this.
62. As the rent sought is in lieu of notice rather than actual occupancy and as the tenant made an attempt to pay it in good faith before the rent would have been due, and as the \$750 security deposit is in excess of the amount owed, late fees do not apply.
63. The landlords' claim for unpaid rent succeeds in the amount of \$557.38 and their claim for unpaid utilities succeeds in the amount of \$47.19. The landlords' claim for late fees fails.

Issue 5: Security Deposit

64. As the landlords are owed moneys, they are entitled to apply the security deposit against the sum owed. In this case, the security deposit was \$750 paid in April 2023.

65. 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.
66. For the year of 2023, the interest rate prescribed by the regulations was 0%. For 2024, the regulations set a simple cumulative interest rate of 1% annual. Applied to the date of the hearing, this results in a total interest of \$5.23.

Decision

67. The termination notice dated 26-April-2024 is invalid.
68. The landlords' claim for the return of possessions fails.
69. The landlords' claim for damages fails.
70. The tenant shall return the Wucgea Fire Blanket which was removed from the premises.
71. The landlords' claim for unpaid rent succeeds in the amount of \$557.38.
72. The landlords' claim for utilities succeeds in the amount of \$47.19.
73. The landlords' claim for late fees fails.
74. The landlords may apply the security deposit and interest, valued at \$755.23, against moneys owed.
75. The landlords did not seek hearing expenses. However, the tenant asks this tribunal to make an award of costs against the landlord in the amount of \$5000-\$7500, which they say represents about half of the legal costs incurred.
76. This tribunal turns to Policy 12-001 for guidance regarding awards of costs. The policy states that where a party makes a claim for costs, those costs must be identified and itemized on an Application for Dispute Resolution. As in any claim for compensation, the applicant must establish, on the balance of probabilities, that they had incurred the costs which are claimed, and that they are entitled to be compensated. To establish entitlement to an award for costs, the claimant is required to present receipts for any costs claimed, and the claimant would be required to present reasons as to why they are entitled to compensation.
77. In this case, the tenant did notify this tribunal and the landlords that they intended to pursue costs in a letter dated 9-July-2024 from the tenant's counsel to the landlords and subsequently included in communication with the tribunal. Specifically, the letter states "our client will be seeking legal costs on a fully indemnified basis in all actions, including the Residential Tenancies Board action. Our current estimate of legal fees for this matter is \$15,000.00 not including HST or third-party disbursements."
78. I decline to hear the tenant's request for costs on the basis that an Application for Dispute Resolution including a specific claim for costs was never received from the

tenant. Costs were never itemized or identified on an application, nor do I find that the landlords were given sufficient notice of exactly what costs the tenant was looking to have indemnified prior to the date of the hearing.

Summary of Decision

79. The termination notice dated 26-April-2024 is invalid.
80. The tenant is to return the Wucgea fire blanket to the landlords.
81. The landlords shall pay to the tenant \$150.66 as follows:

| | |
|-----------------------|--------------|
| Hearing Costs..... | \$2000.00 |
| Security Deposit..... | \$755.23 |
| Less Unpaid Rent..... | -(\$557.38) |
| Less Utilities..... | -(\$47.19) |
| Total..... | \$150.66 |

18-March-2025

Date

[Redacted]
Seren Cahill
Residential Tenancies Office