

Residential Tenancies Tribunal

Application 2024-0709-NL & 2024-0834-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 12-September-2024 at 9:04 am.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as the tenants, attended via teleconference.
3. The respondent, [REDACTED], hereinafter referred to as the landlord, also attended via teleconference.

Preliminary Matters

4. Both parties acknowledged they received notice of the hearing more than ten days in advance.
5. The tenants challenge the validity of a termination notice. The landlord seeks an order of vacant possession related to the same notice. As a termination notice must be valid in order to be the basis for an order of vacant possession, both issues will be addressed together.
6. The landlord had initially requested that this tribunal issue an order requiring the tenants to provide a written apology. By the time of the hearing, she had been informed that this tribunal does not have the power to order such a remedy and therefore asks to amend her application to omit this request.
7. Both the tenants and the landlord claimed for utilities owing. As both claims will turn on the same evidence, they will be dealt with together as one issue below for clarity and brevity.
8. The tenants submitted a significant amount of evidence which the landlord objected to on the basis that she was never given a chance to review it. Procedural fairness requires that parties have an opportunity to examine any evidence the other party seeks to submit. In order to facilitate teleconference hearings, this tribunal requires parties to serve copies (digital or otherwise) of any evidence they wish to submit at the hearing to both the tribunal and the other party. This is necessary to ensure every participant has

the opportunity to a fair hearing. The tenants testified that all the evidence the landlord objected to was also in the evidence the landlord had served on them. In accordance with the principles of natural justice, I exercised my discretion to exclude from the record any and all of the tenant's evidence which was not disclosed to the landlord.

Issues before the Tribunal

9. Should the tenants' and/or landlord's claim for utilities succeed?
10. Should the landlord's claim for damages succeed?
11. Should the landlord's claim for an order of vacant possession succeed?

Legislation and Policy

12. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act*, 2018 (the *Act*).
13. Also considered and referred to in this decision are s. 20(2-4) and s. 34 of the *Act*, which read as follows:

Notice where material term of agreement contravened

20. ...

(2) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes a material term of a rental agreement, the landlord may give the tenant written notice of the contravention, and if the tenant fails to remedy the contravention within a reasonable time after the notice has been served, the landlord may give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises.

(3) Where the tenant gives a landlord notice under subsection (1) or the landlord gives a tenant notice under subsection (2) that a rental agreement is terminated, the notice shall be given

(a) not less than 7 days before the end of a rental period where the residential premises is rented from week to week; and

(b) not less than one month before the end of a rental period where the residential premises is

(i) rented from month to month,

(ii) rented for a fixed term, or

(iii) a site for a mobile home.

(4) 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: Utilities

Tenants' Position

14. The tenants claim for compensation for utility bills in the amount of \$727.31. They submit that the landlord overcharged them for utilities over the course of the tenancy in this amount. The rental agreement (submitted by both parties and labelled T#1) states that payment of utilities is a tenant obligation. The residential premises is a basement apartment of a house which has only one electricity meter. The tenants testified that when they first signed the agreement, they expected the bill to be divided by the area of the house, but that the landlord shortly thereafter informed them that she intended to divide it by person, so that the tenants would be paying 2/3rds of the total bill. They accept that 2/3s is the correct number but assert that they have paid beyond that. They said this amount comes from a bill they mistakenly paid twice as well as a bill that covered a period prior to the tenancy.

Tenant's Position

15. The landlord agrees with the tenants that the agreement was for the tenants to pay 2/3rds of the bill and agrees she at one point overcharged the tenants for utilities (she says one time, by accident) but otherwise disputes all the tenants' claims. She claims that the tenants owe her unpaid utilities in the amount of \$214.19. She testified that this is the sum of 2/3rds of the outstanding utility bill owing for each of June, July, and August 2024 totaling \$477.69 minus the \$263.50 overcharge she acknowledges making

in March. She provided receipts for payments received from the tenants as well as bills from Newfoundland and Labrador Power (LL#1 and LL#2). Her accounting includes a \$15.00 late fee she charged the tenants in April (LL#1 page 5), which the tenants suggested was illegitimate.

Analysis

16. When testifying about the issue of the utilities, the tenants testified in a way which was at times argumentative and at other times evasive. Their evidence was difficult to follow. They seemed unclear on how they had calculated the total they submitted that the landlord owed them. The documentary evidence does not seem to support their claim.
17. The landlord's testimony on the issue of utilities was candid, straightforward, and responsive to questions. Her evidence flowed in a logical and consistent manner and her testimony matches the documentary evidence. She was able to rationally and clearly explain apparent inconsistencies (e.g., an apparent error was explained as being the result of a ten-day period in March where the landlord discounted utilities as she had a guest for that period).
18. Considering the evidence in its totality, I find on a balance of probabilities that the tenants owe the landlord \$214.19.
19. The tenants suggested that a \$15 late fee ought not to be included as late fees for non-payment of utilities, as opposed to rent, is not in accordance with the *Act*. According to the landlord's uncontradicted evidence, the rent was not paid fully paid in April until 8-April-2024. The late fees set by the regulations are a maximum of \$5 for the first day and \$2 for each thereafter, so the landlord could at that point have charged up to \$24 in late fees. As the landlord was entitled to charge the late fee based on the late payment of rent alone, I decline to consider at this time whether a late fee can be imposed for late payment of utilities.

Issue 2: Damages

Landlord's Position

20. The landlord seeks \$288.00 in damages regarding damaged outdoor stairs. This represents the cost of anti-slip stair tread covers to cover the stairs. She says this is necessary as the tenants sliced an onion and placed it in sections on each step, leaving a yellow stain. A photo of the stairs and the cost of the repair was provided (LL#3 and LL#4 page 2). The landlord testified that she had cooked a roast on 2-August-2024, and the recipe included an onion. When she was finished, she discarded the remaining, mostly intact onion on the lawn to allow it to decompose. She says she found the sliced onion the day after and removed it, thinking little of it. Only later did she realize it had stained the steps. She testified that another day or two after this the police arrived to speak with her and advised her that the tenants had complained that she had attempted to poison their dog by leaving an onion on the lawn. This led her to conclude it was the tenants who had placed the onion on the stairs.

Tenant's Position

21. The tenants deny placing the onion on the stairs and question whether an onion was placed on the stairs. They point out the landlord has no direct evidence that they placed the onion on the stairs. One of the tenants testified that she disposed of the onion herself after the police arrived and would not leave it on the premises because it is hazardous to her dog. They agreed they called the police in relation to the onion.

Analysis

22. In accordance with the Residential Tenancies Program Policy and Procedure Guide policy 09-003, in order to succeed in a claim for damages, a landlord must provide sufficient evidence to establish on a balance of probabilities that their property was damaged, that the damage was caused by a wilful or negligent act of the tenants, and the cost of repair or replacement. This should include documentary evidence where possible.
23. Considering the totality of the evidence, I am unable to conclude on a balance of probabilities that the wilful or negligent actions of the tenants or a person they allowed on the premises damaged the landlord's property.
24. This portion of the landlord's claim fails.

Issue 3: Vacant Possession

Landlord's Position

25. The landlord submits that she issued a valid termination notice, that the termination date on the notice has expired, and that she is therefore entitled to an order of vacant possession.

Tenants' Position

26. The tenants submit that the notice is invalid as they were not in breach of a material term of the rental agreement.

Analysis

27. In order to receive an order of vacant possession, a landlord must have issued a valid termination notice. To be valid, a termination notice must comply with all relevant sections of the *Act*. In this case, two standard (without cause) termination notices were issued, followed by a termination notice for cause. The with cause notice has a termination date prior to the later of the without cause notices. I will therefore consider it first.
28. The landlord submitted a termination notice labelled LL#5. LL#5 is written in the form prescribed by the minister. It contains the name and address of the recipients. It identifies the residential premises for which it was given. It states it is issued under s. 20(2) of the *Act*. It therefore complies with s. 34.

29. LL#5 was signed by the landlord who provided it. According to the landlord's uncontradicted testimony, it was given to the tenants on 23-July-2024, which is 9 days before the beginning of the relevant rental period. It states the termination date as 31-August-2024, which is the last day of the relevant rental period. It was served on the tenants electronically, in accordance with s. 35(2)(f) of the *Act* as well as personally under s.35(2)(a). It therefore complies with s. 20(4).
30. LL#5 provides more than one full month's notice, in accordance with s. 20(3)(b) of the *Act*.
31. The last remaining issue regarding the validity of LL#5 is determining whether it complies with s. 20(2) of the *Act*. The first step in determining this is determining whether the tenants breached a material term of the rental agreement. The facts as agreed by the parties are that for a period of about one month or so, the tenants had two animals which the landlord says were present contrary to the rental agreement. These animals were the tenant's turtle and a small dog belonging to the tenant's mother, who had been staying at the premises.
32. The final page of the rental agreement (LL#7 page 8) includes several additional terms and conditions including "no non-approved pets." The landlord asserts that the only two pets approved were two medium size dogs. The evidence is clear that this did not include the tenant's mother's small dog, which was residing with them while she was visiting. I am satisfied on a balance of probabilities that the tenants were therefore in breach of a term of the rental agreement and that the term was material.
33. The next question is whether the landlord provide a written notice of the breach. I am satisfied that she did. A copy of this can be seen in LL#6 page 51, which shows that the landlord raised the issue with the tenants on 2-June-2024 via text message, which is a form of writing. She specifically identifies the small dog and notes that pets need to be approved by her. The tenants' testimony also made it clear that this had been conveyed to them.
34. Finally, I must determine whether the tenants failed to remedy the breach within a reasonable amount of time after receiving the written notice and before the termination notice was issued on 23-July-2024. The landlord testified that she observed the dog on the property on 19-July-2024, and that she had taken video footage of this (LL#8). The dog is clearly visible in the video. I find that the tenants failed to remedy the breach in a reasonable amount of time.
35. LL#5 complies with all relevant sections of the *Act* and is therefore valid. It is unnecessary to determine the validity of the other termination notices and I decline to do so.

Decision

36. The tenants' claim for utilities fails.
37. The landlord's claim for utilities succeeds in the amount of \$214.19.

38. The landlord's claim for damages fails.
39. A valid termination notice was issued with a termination date of 31-August-2024. The rental agreement terminated on that date. Insofar as the tenants are still residing at the premises, they are doing so illegally.
40. The landlord's claim for an order of vacant possession succeeds.
41. As the landlord's claim was successful, she is entitled to have her reasonable hearing expenses reimbursed. She claims \$20 for the application fee, \$24.98 for a flash drive which was necessary to submit evidence, \$80.69 for the cost of printer ink, and approximately \$50.00 in transportation costs. Evidence was provided of the cost of the printer ink and of the flash drive. As the tenants pointed out, these are not actually receipts. Nevertheless, as our office now has physical possession of the flash drive, it is obvious this is a legitimate expenditure. I decline to grant the cost of the printer ink in the absence of a receipt. As transportation to our office and back was an unavoidable cost at least once, for the conveyance of the evidence, I award transportation costs for this ~84 km round trip at the rate used by the Treasury Board Secretariat for determining Automobile Reimbursement Rates for Using a Private Vehicle at Work basic rate of \$0.3974/km, as these represent a presumably accurate analysis of the actual cost of transportation at a per km basis, for a total transportation cost of \$33.38.
42. Additional hearing expenses were mentioned at the time of the hearing but no receipt was received.
43. I award in hearing expenses the \$20.00 application fee, \$24.98 for the flash drive, and \$33.38 in transportation costs

Summary of Decision

44. The tenants shall pay to the landlord \$292.55 as follows:

Utilities.....	\$214.19
Hearing Expenses.....	\$78.36
Total.....	\$292.55

45. The tenants shall vacate the premises immediately.
46. The tenants shall pay to the landlord any costs charged to the landlord, by the Office of the High Sherriff, should the landlord be required to have the Sheriff enforce the attached Order of Possession.
47. The landlord is granted an order of possession.

15-October-2024

Date



Seren Cahill
Residential Tenancies Office