

## **Residential Tenancies Tribunal**

Application 2024--0748-NL & 2024-0808-NL

Michael Reddy  
Adjudicator

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### **Introduction**

1. Hearing was heard at 8:59 AM on 7 October 2024 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", attended the hearing. The second applicant, [REDACTED] [REDACTED] did not attend the hearing.
3. The respondents and counter-applicants, [REDACTED] and [REDACTED] [REDACTED], hereinafter referred to as "the tenants", attended the hearing.

### **Preliminary Matters**

4. The tenants submitted an affidavit of service indicating the landlords were served the Application for Dispute for Resolution electronically ([REDACTED] & [REDACTED]) on 11 September 2024 at 7:28 PM (T#1). This is appropriate service as determined in the *Residential Tenancies Act, 2018*.
5. The landlord submitted an affidavit indicating the tenants were served electronically ([REDACTED] & [REDACTED]) at 3:30 PM on 22 September 2024 (L#1). The tenant did not dispute receipt of this notification. This is appropriate service as determined in the *Act, 2018*.
6. The details of the claim were presented as a written fixed term agreement (L#2). The 12-month fixed term agreement commenced on 26 March 2023 until 26 March 2024, followed by a six-month fixed term agreement which began on 27 March 2024 until 30 September 2024. Rent was set at \$2300.00 due on the 1<sup>st</sup> of each month. There was a security deposit of \$1600.00 collected on 26 March 2023 which is still in the possession of the landlords. The tenants vacated the rental premises on 31 July 2024.

7. Both parties amended their respective applications to include hearing expenses.
8. In a proceeding under the *Residential Tenancies Act, 2018*, the applicants have the burden of proof. This means the applicants have the responsibility to prove that the outcome they are requesting should be granted. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicant has to establish that his account of events is more likely than not to have happened.

### **Issues before the Tribunal**

9. The landlords are seeking the following:
  - Validity of termination notice issued by tenants
  - Rental arrears of \$2300.00
  - The security deposit to be applied against payment owed
  - Hearing expenses in the amount of \$20.00.
10. The tenants are seeking the following:
  - Refund of the Security Deposit plus interest
  - Hearing expenses in the amount of \$25.00

### **Legislation and Policy**

11. The jurisdiction of the Director of Residential Tenancies is outlined in Sections 46 and 47 of the *Residential Tenancies Act, 2018*.
12. Also, relevant and considered in this claim are Sections 10, 14, 18, 23, 34 and 35 of the *Act*. Sections 10, 14, and 18 will be addressed in the Analysis section of each applicable issue. Section 23, 34 and 35 are offered as follows:

#### **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 landlord;
- (b) state the date on which the rental agreement terminates and the tenant is required to vacate the residential premises; and
- (c) 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.

13. In addition, relevant and considered in this claim are Policies 7-005: Peaceful Enjoyment and 12-001: Hearing Expenses of the *Residential Tenancies Program*.

### **Issue 1: Validity of Termination Notice**

#### Landlord Position

14. The landlord testified there was a six-month fixed term rental agreement in place when the tenants vacated on 31 July 2024. Along with their application, the landlords provided a timeline of what allegedly transpired between the tenants and the landlords (L#3). The landlord stated the tenants, on 30 June 2024, were electronically served a Landlord's Notice to Terminate- Standard under Section 18 of the *Act*, with a request for the tenants to vacate by 30 September 2024 (L#4).

15. The landlord testified on 5 July 2024, the tenants contacted the landlords by e-mail indicating they wanted to vacate the rental premises by the end of July 2024 (L#5). The landlord stated the tenants claim the landlords were attending the rental premises without prior approval of the tenants. She stated the tenants were supplied with notifications that the landlords would be completing inspections in the timelines identified in the *Act*. The landlord stated the tenants were informed by e-mail on the same day of the expectations of a fixed term rental agreement and that they were not in support of the tenant's request to terminate the rental agreement on 31 July 2024 (L#6).

16. The landlord testified on 23 July 2024, the tenants sent the landlords a Tenant Notice to Terminate Early- Cause under Section 23 of the *Act*, indicating they would be vacating the rental premises on 31 July 2024 (L#7).
17. The landlord testified the tenants vacated the rental premises on 31 July 2024 and alleged the tenants broke their fixed term rental agreement.

#### Tenant Position

18. The tenants did not dispute receiving the Section 18 termination notice. They testified at 5:45 PM on 23 July 2024, they sent the landlords a termination notice for cause by e-mail indicating they would be vacating the rental premises by 31 July 2024. They stated this was due to the landlords and contractors "frequently" attending the rental premises to complete inspections and repairs.
19. The tenants testified the landlords arranged for a painter to enter the rental premises after they informed them they did not wish for the landlords and/or contractors to be present when they were not at home at the rental premises during the weekends. One tenant stated she was a nurse which often involved her working overnights, and they requested for the visits to occur with required notice provided, which was not always supplied to the tenants. The tenants stated they were not familiar with the requirements of the *Residential Tenancies Act, 2018* as they were new to the province, and they could not continue to have the landlord's impact on their peaceful enjoyment of the rental premises.
20. The tenants did not dispute they vacated the rental premises on 31 July 2024 at which time the keys to the rental premises had been returned to the landlords on the same day they vacated.

#### **Analysis**

21. Upon review of the termination notice issued to the landlords electronically at 5:45 PM on 23 July 2024 (L#7), the timelines identified by the *Act* under Section 23 have been complied with. Furthermore, Section 34 and the requirements have been followed. Also, the means of service was in accordance with Section 35 of the *Act*.
22. Statutory conditions 5(b), 7(b), set out in Section 10(1) 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:*

....

5. Entry of Residential Premises – *Except in the case of an emergency, the landlord shall not enter the residential premises without the consent of the tenant unless:*

*b) The entry is made at a reasonable time and written notice of the entry has been given to the tenant at least 24 hours in advance of the entry*

....

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.*

23. The tenants testified that the landlords and contractors “frequently” attending the rental premises to complete inspections and repairs impacted on their peaceful enjoyment. They stated there had been multiple situations when the landlords attended the rental premises without providing 24 hours’ notice.
24. Along with their application, the landlords supplied a timeline of events leading up to the tenants vacating by 31 July 2024 (L#3). In examination of the electronically signed piece of evidence, L#3 identifies 10 visits to the rental premises over 16 months of occupancy which were made by either the landlords or contractors. Those dates are as follows:
  - 3 June 2023 at 1 PM for home inspection
  - 22 October 2023 in the afternoon to repair caulking around the bathtubs
  - 17 December 2023 in the afternoon to bring new microwave and change battery
  - 3 March 2024 for home inspection
  - 20 March 2024 at 6 PM with home inspector
  - 23 March 2024 in afternoon with roofer to check attic ventilation
  - 1 April 2024 in afternoon with contractor to seal bathroom fan
  - 17 April 2024 between 9 AM and 3 PM with cleaner
  - 24 June 2024 at 12 PM to repair tub faucet and change battery in smoke detector
  - 29 and 30 June 2024 between 11 AM and 2 PM with plasterer/painter
25. The landlord testified the 29 and 30 June 2024 entry by the plasterer/painter was one which the tenant had been supplied notice in accordance with the Act. Along

with their application, the landlords supplied a text message sent to the tenant's correspondence of the notice of their wish to enter the rental premises, the reason and rational behind those dates and times (L#8). This written notice to enter the rental premises complied with the timelines identified in Section 10.5(b) identified above.

26. According to Residential Tenancies Policy 7-005 Peaceful enjoyment, interference of peaceful enjoyment is defined as follows, "*an ongoing disturbance or activity, outside of normal everyday living, caused by the landlord or the tenant*". The testimonies of both parties did not question that the visits to the rental premises was related to the property and what could be considered upkeep of the property. What was questioned by the tenant was their request to not have a contractor present while they were not at home. I accept the tenant's testimony they were not comfortable with this situation; however, the landlords supplied written notice in the appropriate timeframes. Furthermore, the purpose of this entry was related to the upkeep of the rental premises.
27. While the tenants testified there were occasions when the landlords entered the rental premises without supplying 24 hours' notice, there were no specifics offered such as dates, times, how long the landlords and/or contractors were present. I find that the tenants have failed to substantiate their claims against the landlords and have not demonstrated that the landlords *unreasonably interfered* with their rights and reasonable privacy. Based on the evidence in its totality, I find on a balance of probabilities that no valid notice of termination was provided.

## **Decision**

28. The termination notice issued by the tenants on 23 July 24 is not valid.

## **Issue 2: Rental Arrears**

### Landlord Position

29. The landlord testified monthly rent was set at \$2300.00. The landlords are seeking \$2300.00 for rent for August 2024. The landlord stated the tenants vacated on 31 July 2024 and broke the fixed term rental agreement which was due to end on 30 September 2024. Along with their application, the landlords supplied a rent ledger (L#9).
30. The landlord testified the tenants had been served a standard termination notice on 30 June 2024 with a request for the tenants to vacate by 30 September 2024 (L#4). The landlord stated the tenants informed the landlords on 5 July 2024 they wished to vacate the rental premises by 31 July 2024 (L#5). Following this,

the landlords contacted the tenants and indicated they did not agree with the tenancy being terminated on 31 July 2024 (L#6).

31. The landlord testified the tenants then issued a termination notice under Section 23 of the *Act*. The landlord testified after the tenants vacated on 31 July 2024, they secured new tenants for the rental premises by September 2024.

#### Tenant Position

32. The tenants did not dispute they had been served a three month notice on 30 June 2024. There was no dispute the tenants requested to vacate on 31 July 2024. The tenant testified they did not feel they were financially responsible for rent for August 2024.

#### **Analysis**

33. Section 18 (5) of the *Residential Tenancies Act, 2018* states:

#### **Notice of Termination of Rental Agreement**

*5) Notwithstanding subsection (1) to (3), a notice of termination is not required to be given when a landlord and a tenant agree in writing to terminate the rental agreement on a specific date.*

34. The tenants' Section 23 notice, as indicated herein, is invalid. In the absence of a valid termination notice, the landlords are entitled to recover unpaid rent subject to their duty to mitigate their losses by attempting to find a new tenant. Furthermore, both parties did not agree either verbally or in writing to terminate the rental agreement on 31 July 2024. The landlord's Notice to Terminate-Standard (L#4) identifies the rental agreement was scheduled to end by 30 September 2024. The landlord testified a new tenant took occupancy by September 2024.
35. The tenants are responsible for \$2300.00 rent for August 2024.

#### **Decision**

36. The landlords claim for rental arrears of \$2300.00 succeeds.

#### **Issue 3: Disposition of Security Deposit.**

37. As the landlords are owed moneys, they are entitled to apply the security deposit against the sum owed. The security deposit in this case is \$1600.00.

38. Section 14(7) of the Act states that the landlords shall credit interest to the tenants 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. Prior to 2024, the interest rate prescribed by the regulations was 0% for the relevant years. In 2024, the rate was set to 1% cumulative simple annual interest. That results in total interest at the time of the hearing being \$12.33 for a total of \$1612.33.

#### **Issue 4: Hearing Expenses**

39. Along with their application, the landlords provided a copy of the receipt for the hearing expense (L#10) and are seeking compensation. As their application succeeds, in accordance with Residential Tenancies Program Policy 12-001, the landlords claim for hearing expenses succeeds. The tenants are seeking compensation of \$25.00 for a commissioner of oaths. As their application fails, this does not succeed.

40. As the landlords application succeeds, the tenants shall be responsible for the \$20.00 hearing expense.

#### **Summary of Decision**

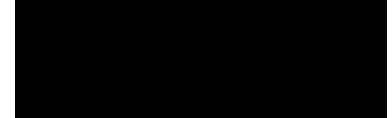
41. Finds that the termination notice, dated 23 July 2024, is not a valid notice.

42. The landlords are entitled to **\$707.67** determined as follows:

• Rental Arrears.....	\$2300.00
• <b>Less Security Deposit + Interest.....</b>	<b>\$1612.33</b>
• Hearing Expense.....	\$20.00
• Total.....	<b><u>\$707.67</u></b>

24 February 2025

Date



Michael Reddy, Adjudicator  
Residential Tenancies Office