

Residential Tenancies Tribunal

Application 2024-0924-NL & 2024-0999-NL

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:57 p.m. on 20-November-2024.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as "the tenants" attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as "the landlord" attended by teleconference.

Preliminary Matters

4. The tenants testified that they had served the landlord with the notice of hearing electronically by email on 11-October-2024 at 6:51pm. The landlord confirmed receipt of the document on that date. The landlord countered the claim and submitted an affidavit with his application stating that he served one of the tenants with the notice of hearing electronically by email on 5-November-2024 (LL#1). The tenants both confirmed receipt of the one document on that date and waived service. In accordance with the *Residential Tenancies Act, 2018* this is good service.
5. There was a written term rental agreement that commenced on 1-January-2024. The tenants vacated the unit on 31-March-2024. Rent was \$1400.00 per month due on the first day of each month. A security deposit of \$1050.00 was paid on 27-December-2023 and is in the landlord's possession.
6. The landlord's application is amended to seek a *levy fee* of \$1050.00 as per paragraph 53 of the rental agreement (LL#2). This tribunal accepts that both parties were fully aware of what the landlord was seeking in his application.

Issues before the Tribunal

7. The tenants are seeking:
 - Refund of security deposit \$1050.00 plus interest.

8. The landlord is seeking:
 - Validity of termination notice
 - Other – levy fee paid \$1050.00
 - Hearing expense \$45.00
 - Security deposit plus interest to be applied against monies owed.

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
10. Also, relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 14: Security deposit and Section 18: Notice of termination of rental agreement. Also, relevant and considered in this decision is the following section of the *Residential Tenancies Policy Manual*: Section 12-1: Recovery of costs.

Issue # 1: Validity of Termination Notice

Relevant Submission

11. The landlord submitted a copy of a termination notice given to him by the tenants on a *Tenant's Notice to Terminate – Standard* form dated and signed on 1-March-2024 terminating the tenancy on 31-March-2024 (LL#3).

Landlord's Position

12. The landlord testified that he entered into a fixed term rental agreement with the tenants on 1-January-2024 to end on 31-December-2024. The landlord stated that the tenants breached the contract by leaving early on 31-March-2024. The landlord is questioning the validity of the termination notice and stated that the tenants did not have a right under the rental agreement to end the tenancy early on 31-March.

Tenant's Position

13. The tenants testified that the unit was damp and cold, and they wanted to find a more suitable place to reside. The tenants testified that they made the landlord aware of the issues within the unit and asked the landlord to assist them by sending them the proper termination form required to end the tenancy with cause. The tenant's testified that the landlord sent them a standard termination form and as New Canadians, they were not award that the form was not the proper form. The tenant's position is that the landlord knew that they were terminating the tenancy with cause and the notice is a valid notice.

Analysis

14. Section 18 of the *Residential Tenancies Act, 2018* states: Notice of termination of rental agreement.

Notice of termination of rental agreement

18.(1) A tenant shall give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises ...

(c) not less than 2 months before the end of the term where the residential premises is rented for a fixed term.

15. Section 34 of the *Residential Tenancies Act, 2018* states:

34. Requirements for Notices

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 the Act under which the notice is given

16. I asked the landlord why he would send the tenants a standard termination form when he knew they wanted to end the tenancy with cause, and he responded that he also was unfamiliar with the residential tenancy forms. I asked the landlord if he was aware that the tenant's intent was to end the tenancy with cause due to issues within the unit and he responded that the tenants did bring the issue of dampness and cold to his attention at which time he inspected the heaters to ensure that everything was working properly. The landlord also stated that he explained to the tenants why there is dampness in basements in Newfoundland and he stated that he recommended that the tenants use a dehumidifier to assist with the dampness problem. I accept that the landlord fulfilled his obligation to the tenants by inspecting the heaters and making recommendations. With regards to the tenant's claim that they are *New Canadians*, I accept and appreciate the difficulty with the language barrier, however I find that the onus was on the tenants to ensure that they understand what they were signing with regards to the rental agreement and the termination notice and if they did not understand the residential tenancy forms that they could have reached out to either the *Residential Tenancies Office* or *The Association for New Canadians* for assistance.

17. In accordance with Section 34 of the *Act* as stated above, the tenants were responsible to state the section of the Act under which the notice was given. The standard form stated Section 18 of the *Act*, and under this section the tenants were required to give not less than 2 months before the end of the fixed term period after the notice was given. As the tenant's gave the standard termination notice on 1-March and the fixed term was due to end on 31-December, I find that the termination notice was not a valid notice.

Decision

18. The termination notice issued on 1-March-2024 is not a valid notice.

Issue # 2: Other – levy fee paid \$1050.00

Landlord's Position

19. The landlord stated that the tenants broke the fixed term rental agreement and ended the tenancy on 31-March-2024 and he is seeking the *levy fee* of \$1050.00 as agreed to be paid by the tenants in the event that they end the tenancy early. The landlord made reference to paragraph 53 of the rental agreement which states: *If the tenants move out prior to the natural expiration of this lease, a re-rent levy of \$1050.00 will be charged to the tenants* (LL#2). The landlord stated that he is seeking the *levy fee* of \$1050.00 to be paid in full.

Tenant's Position

20. The tenants did not dispute that they vacated the unit early at the end of March nor did they dispute that they agreed to pay a *levy fee* of \$1050.00 if they broke the contract, however the tenant's stated that they are *New Canadians* and their English is not good and they did not fully understand the terms of the rental agreement and they were not familiar with the Residential Tenancies Act or the forms. The tenant's position is that they ended the tenancy with cause due to dampness and cold within the unit and they testified that they made the landlord aware of the issues and they should not be responsible to pay the *levy fee* when they had a legitimate reason to terminate the tenancy.

Analysis

21. I accept that the tenants entered into a fixed term agreement with the landlord, whereby they agreed to pay a *levy fee* of \$1050.00 in the event that they breached the contract. The tenant's termination notice was not a valid notice as per paragraph 18 above, and as such the tenants are required to comply with the terms of the rental agreement as agreed to and signed on 27-December-2023. I find that the tenants are responsible for the *levy fee* of \$1050.00.

Decision

22. The landlord's claim for *Other – levy fee paid* succeeds in the amount of \$1050.00.

Issue # 3: Hearing Expenses \$45.00

23. The landlord paid an application fee of \$20.00 to *Residential Tenancies* and he also incurred a *Commissioner of Oath* fee in the amount of \$25.00. The landlord submitted a copy of the receipts to support the claim (LL#4). In accordance with Section 12-1 of the *Residential Tenancies Policy*, filing fees and any other fees associated with the preparedness of a hearing are allowable costs. As the landlord has been successful in his claim for losses, the tenant is responsible for the hearing expenses.

Decision

24. The landlord's claim for *hearing expenses* succeeds in the amount of \$45.00.

Issue # 4: Security deposit applied against monies owed.

Analysis

25. Section 14 of the *Residential Tenancies Act, 2018* states:

Security deposit

14. (8) *A security deposit is not an asset of the landlord but is held by the landlord in trust and may be used, retained or disbursed only as provided in this section.*
- (9) *Not later than 10 days after the tenant vacates the residential premises, the landlord shall return the security deposit to the tenant unless the landlord has a claim for all or part of the security deposit.*
- (10) *Where a landlord believes he or she has a claim for all or part of the security deposit,*
 - (a) *the landlord and tenant may enter into a written agreement on the disposition of the security deposit; or*

(b) *the landlord or the tenant may apply to the director under section 42 to determine the disposition of the security deposit.*

(11) *Where a tenant makes an application under paragraph (10)(b), the landlord has 10 days from the date the landlord is served with a copy of the tenant's application to make an application to the director under paragraph (10)(b).*

26. The landlord's claim for losses has been successful as per paragraphs 22 and 24, and as such the security deposit shall be applied against monies owed. Pursuant to the *Residential Tenancies Act, 2018* the landlord must pay interest on a security deposit to a tenant for the entire period that the landlord has had the security deposit. The interest is calculated as simple interest and is not compounded. The annual interest for 2024 is 1%.

Decision

27. The landlord's claim for *security deposit to be applied against monies owed* succeeds.

Summary of Decision

28. The tenants shall pay the landlord \$35.68 as follows:

Other (levy fee)	\$1050.00
Hearing expenses	45.00
Less security deposit & interest.....	1059.32
 Total	\$35.68

December 9, 2024

Date



Pamela Pennell, Adjudicator
Residential Tenancies Office