

Residential Tenancies Tribunal

Application 2024-1121-NL
Counterapplication 2025-0005-NL

Oksana Tkachuk
Adjudicator

Introduction

1. Hearing was called at 9:02 a.m. on 12-February-2025.
2. The applicant, [REDACTED], was represented by [REDACTED] and [REDACTED], hereinafter referred to as "the landlords", attended by teleconference.
3. The respondent and a counter applicant, [REDACTED], hereinafter referred to as "the tenant", attended by teleconference.

Preliminary Matters

4. The landlords submitted affidavit with their application stating that they have served the tenant with the notice of the hearing by email to [REDACTED] on 20-December-2024 (LL#1). The tenant confirmed receiving the notice of the hearing on that date. In accordance with the *Residential Tenancies Act, 2018* this is good service.
5. The tenant submitted affidavit with his application stating that he had served the landlords with the notice of the hearing by email to [REDACTED] on 30-January-2025 (TT#1). The landlords confirmed receiving the notice of the hearing on that date. In accordance with the *Residential Tenancies Act, 2018* this is good service, the hearing proceeded.
6. There was a written fixed term rental agreement which commenced on 1-August-2024 for one year, however the tenant was residing in the unit since 1-August-2022. The tenant vacated the unit on 31-October-2024. Rent was \$1600.00 per month due on the last day of each month. A security deposit of \$995.00 was collected on 25-July-2022 and is still in landlord's possession.
7. The landlords amended their application to reduce other expenses from \$300.00 as per application to \$240.51.

Issues before the Tribunal

8. The landlords are seeking:
 - Validity of Termination notice;

- Rent paid \$2800.00;
- Other expenses \$240.51;
- Security Deposit of \$995.00 to be applied against any monies owed.

9. The tenant is seeking:

- Rent refund 3200.00;
- Utilities paid 64.58;
- Other expenses \$879.62;
- Refund of Security Deposit \$995.00.

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*.

11. Also, relevant and considered in this decision are the following sections the *Residential Tenancies Act, 2018*: Section 10: Statutory conditions, Section 14: Security Deposit, Section 23: Notice where landlord contravenes peaceful enjoyment and reasonable privacy and Section 34: requirements for notices, and the following section of the *Residential Tenancy Policy Manual*: Section 7-5: Interference with peaceful enjoyment and reasonable privacy.

Issue # 1: Validity of a Termination notice.

Relevant submission

12. The landlords submitted a copy of a termination notice issued by the tenant on 4-October-2024, indicating the tenant's intention to vacate the property by 1-November-2024 (LL#2). The notice was issued on the grounds of a violation of peaceful enjoyment and reasonable privacy.

Tenant's Position

13. The tenant stated that the landlords violated his right to peaceful enjoyment and reasonable privacy during the summer, as they conducted renovations from the end of June until the end of August, including window replacement and other repairs. The tenant explained that he works late shifts schedule, and the ongoing renovations and noises related to constructions disturbed his ability to rest and sleep during the day. The tenant further stated that he was concern about the lack of a designated parking spot and that the renovations took place on weekends, preventing him from resting. Additionally, the tenant stated that his roommate also moved out, as he was unable to work remotely from the unit due to the disturbance caused by the renovations.

14. The tenant believes his termination notice is valid, as the landlord's actions interfered with his peaceful enjoyment of the property.

Landlord's Position

15. The landlords confirmed that renovations took place between 28-June and 22-August. However, they stated that they made efforts to accommodate tenant's concerns and mitigate any disturbance. Regarding the parking issue, they stated that they arranged for a

new parking spot, and when the tenant expressed concerns about work being conducted during weekends, they discontinued all renovations on weekends.

16. The landlords are questioning the validity of the tenant's termination notice.

Analysis

17. Section 23 of the *Residential tenancies Act* states:

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 tenant;
- (b) state the date on which the rental agreement terminates and the tenant intends to vacate the residential premises; and
- (c) be served in accordance with section 35.

18. **Section 34 of the Residential tenancies Act** states:

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.

19. I accept both the landlord's and tenant's testimony that renovations occurred during the summer 2024. I asked the tenant why he issued a termination notice on 4-October-2024, despite the renovations having ended. The tenant explained that he had been looking for a new rental unit since renovations started due to the disturbance he experienced. However, he stated that he was unable to find a suitable alternative and continued to reside in the unit until found a new place to move in. Furthermore, the tenant stated that he tried to be understanding toward the landlords and, rather than issuing a five-day termination notice, he provided an extended notice period from 4-October to 1-November.

20. According to the Section 23 of the Act as stated above and Section 7-5 of the *Residential Tenancies Policy*, *If the landlord interferes with the peaceful enjoyment or reasonable privacy of the tenant, the tenant may give the landlord notice that the rental agreement is terminated and the tenant is vacating the residential premises on a specified date not less than 5 days, but not more than 14 days, after the notice has been served.*

21. After reviewing the termination notice, I find that it does not meet the legislative requirements of the *Act* such as: it does not indicate the section of the *Act* under which it was issued, as required by Section 34(d) of the *Act*; the tenant did not comply with the required time frame, as the termination date was stated more than 14 days after the termination notice was issued. Additionally, I find that the tenant issued a termination notice more than one month after the renovations – the alleged cause of interference- had ended. For those reasons, I find that the tenant's termination notice is not valid.

Decision

22. The termination notice issued by the tenant on 4-October-2024 is not a valid termination notice.

Issue # 2: Rent paid \$2800.00 Rent refund \$3200.00

Landlord's Position

23. The landlords are seeking payment of rent for November-2024 in the amount of \$1600.00 and claiming \$200.00 per month for the next six months of the new tenancy.

24. The landlords explained that after the tenant notified about his intention to terminate the rental agreement, they made efforts to re-rent the apartment as soon as possible. The landlords submitted copies of advertisements of the property to support their claim (LL#3,4). However, the landlords stated that due to the timing before Christmas, they were unable to find tenants willing to rent the unit at the regular rate of \$1600.00 per month. As a result, the landlords decided to reduce rent to \$1400.00 per month and successfully signed new fixed-term rental agreement, where the new tenancy began on 1-December-2024 (LL#5). The landlords submitted a proof of new rental payment of \$1400.00 to support their claim (LL#6). Because the landlords had to lower the rent, they are seeking compensation of \$200.00 per month for six months, arguing that the tenant's early termination of the rental agreement caused this financial loss.

25. The landlords are seeking rent of \$2800.00 to be paid.

Tenant's position

26. The tenant disputed the landlord's claim for rent to be paid, arguing that the landlord's had the option to rent the unit on a month-to-month basis instead of committing to a fixed-term lease and reduce the rent. Additionally, the tenant suggested that the decision to lower the rent to \$1400.00 may have been influenced by high heating costs rather than solely due to his early termination.

27. The tenant further questioned the landlord's claim that it took time to secure new tenant, stating that the delay in re-renting the unit was likely due to their choice to advertise the property only through private Facebook pages.

28. The tenant is seeking a rent refund of \$3200.00 for the months of September and October, stating that he intended to vacate earlier due to the disturbance caused by the landlord's renovations, however he remained in the unit only because he was unable to find a new apartment.

29. The tenant stated that due to the disturbance occurred during renovations his roommate vacated the unit, and he needed to pay rent in full, although the workers vehicles were parked on his parking space due to the renovations, and he was not able to use his parking space.
30. Based on these circumstances, the tenant is seeking reimbursement for the rent paid during September and October.

Analysis

31. It has been already determined in paragraph 20 of this decision that the tenant did not provide a valid termination notice. As a result, I find that the landlords provided sufficient evidence showing that they actively advertised the unit on two different platforms, in effort to re-rent the property and for those reasons are entitled to compensation for one month rent, as they required time to secure a new tenant.
32. However, I do not find the tenant responsible for the landlord's claim regarding the reduced rent for the new tenancy. The landlords have not provided sufficient evidence to establish that the reduction in rent was directly caused by the tenant's termination of the rental agreement rather than other factors, such as unit's condition.
33. Regarding the tenants claim for refund of rent for the months of September and October, I find this claim to be unreasonable. The tenant remained in the unit during those months, continued to occupy the space and benefited from this issue. While the tenant may have wished to leave the unit sooner due to the renovations, he ultimately chose to stay and did not vacate the premises. Given these circumstances, I find no bases to refund the rent for those months.

Decision

34. The landlord's claim for rent paid succeeds in the amount of \$1600.00.
35. The tenant's claim for refund of rent does not succeed.

Issue # 3: Other expenses (Utilities to be paid) \$240.51. Utilities paid \$64.58.

Landlord's Position

36. The landlords are seeking utilities to be paid for the month of November. The landlords submitted NL Power bill of \$189.88 to support their claim (LL#7). The landlords stated that they prorated the power bill for the full month of November and are seeking \$240.51 to be paid.

Tenant's position

37. The tenant is seeking reimbursement for half of the utility costs for the months of September and October. The tenant claims that, due to the disturbance caused by renovations carried out by the landlords, his roommate vacated. As a result, the tenant was solely responsible for the full cost of utilities during this period. The tenant submitted copied of NL Power bills to support his claim (TT#2).

Analysis

38. I accept the tenant's testimony, that his roommate vacated the unit. However, the rental agreement was signed between the tenant and the landlords, and any agreement the tenant had with his roommate regarding shared expenses was a private matter between them. I find that the landlords were not responsible for ensuring that the second room was occupied or for any financial agreements between the tenant and his roommate. I find the tenant's claim for reimbursement of utilities to be unreasonable.

39. As it has already been determined in paragraphs 20 and 27, that the tenant's termination notice was invalid and that the landlords are entitled to compensation for November rent, I also find that the tenant is responsible for the utility costs for the month of November. To determine the appropriate amount, the utility bill was prorated:

$$\begin{aligned} \$189.88 : 22 \text{ (days)} &= \$8.63 \\ 8.63 * 30 \text{ (days)} &= \$258.9 \end{aligned}$$

This tribunal is application driven and cannot award higher amounts that have been requested in the application. As the landlords have claimed \$240.51 for the utilities, I find that the landlords will be awarded \$240.51.

Decision

40. The landlord's claim for other expenses succeeds in the amount of \$240.51.

41. The tenants claim for utilities does not succeed.

Issue # 4: Other expenses (Compensation for lost income) \$879.62

Tenant's position

42. The tenant stated that he was forced to use 25.5 hours of leave at his workplace for the period of 19-July-2024 to 22-August-2024 due to noise disturbance during renovation process and lack of sleep, as he was working in combination of days and evenings shifts. The tenant submitted a copy of work schedule to support his claim (TT#3). The tenant explained that his evening shifts ended at 12:30 am, while constructions began at 7:30-8:00 am. The tenant stated that his hourly rate was \$34.50 per hour, and he is seeking compensation for lost income of \$879.50.

Landlord's Position

43. The landlords disputed their responsibility for these costs, arguing that they had a right to complete the renovation and explained that from 22-July renovations started around 9:30-10:00 am and took 3-5 hours and were finished between 12:30-2:30 pm.

Analysis

44. According to the section 10(a) of the *Residential Tenancies Act*, *The Landlord shall maintain the residential premises in a good state of repair and fit for habitation during the tenancy and shall comply with a law respecting health, safety or housing.* I accept that the landlords had a right to conduct the renovations as part of maintaining the rental unit. While I acknowledge that the tenant experienced some level of disturbance, I find that the landlords took reasonable steps to mitigate the impact by adjusting work hours and ceasing weekend work upon the tenant's request. I accept the landlords' testimonies that the

renovations were conducted during daytime hours, which are considered reasonable for such work. I find that the tenant's employment arrangements and work schedule are independent of the tenancy agreement, and any financial loss due to daytime noise does not create a legal entitlement to compensation from the landlords.

Decision

45. The tenant's claim for compensation for lost income does not succeed.

Issue # 5: Security deposit to be applied against any monies owed \$995.00

Refund of Security deposit \$995.00

Analysis

46. 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).

47. The landlord's claim for losses has been successful as per paragraphs 27 and 33 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 interest for 2022-2023 was 0% and the annual interest in 2024-2025 is 1%.

Decision

48. Landlord's claim for Security deposit plus interest to be applied against monies owed succeeds.

Summary of Decision

49. The termination notice issued by the tenant on 4-October-2024 is not a valid termination notice.
50. The tenant's claim for compensation for other expenses does not succeed.
51. The tenant shall pay the landlords \$834.36 as follows:

Rent	\$1600.00
Other expenses	\$240.51
Less Security Deposit & interest ...	\$1006.15
 Total	 \$834.36

February 24, 2025

Date

Oksana Tkachuk, Adjudicator
Residential Tenancies Office