

Residential Tenancies Tribunal

Application 2024-1166-NL & 2025-0068

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 3-February-2025 at 1:52 pm.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as the tenants, attended via teleconference.
3. The respondents and counter-applicants, [REDACTED] and [REDACTED], hereinafter referred to as the landlords, also attended via teleconference.

Preliminary Matters

4. Both parties acknowledged that they were served notice of the other party's application more than ten days in advance of the hearing date.

Issues before the Tribunal

5. Should the landlords' application for unpaid rent succeed?
6. Should the landlords' application for an order of vacant possession succeed?
7. Should the landlords' claim for damages succeed?
8. Should the tenants' claim for a rent reduction 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*).

Notice where failure to pay rent

19. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),

(a) where the residential premises is rented from week to week and the amount of rent payable by a tenant is overdue for 3 days or more, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 3 days after the notice is served on the tenant; and

(b) 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, and

the amount of rent payable by a tenant is overdue for 5 days or more, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 10 days after the notice is served on the tenant.

...

(4) 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.

Issue 1: Unpaid Rent

Landlord's Position

11. The landlords claim for \$6600.00 in unpaid rent. A rent ledger was provided in support of this (LL#1). They say that the rental agreement was for a monthly rent of \$1800, but the only received \$1500/month from 1-March-2024, when the tenancy began, to 3-December-2024, which is the last payment included on the ledger. The landlords testify that no rent has been received since the ledger was submitted but that rent has since become due in February, bringing the new total owing to \$6600.00.

Tenant's Position

12. The tenants testified that the rental agreement was for \$1500.00/month. He says he vacated the premises 31-January-2025 so he does not owe rent for February. He agrees he paid nothing for the month of January but says this was because he applied for a \$1000 rent reduction (see below, issue 4), and he was forced to purchase a replacement television for ~700.00 because his own was damaged due to allegedly faulty wiring in the premises.

Analysis

13. LL#2 is a copy of the rental agreement. The last page of the document is labeled "Ammendment [sic] to Lease Agreement." It states that the landlord agrees to discount the rent from \$1800.00 to \$1500.00 if the tenant agrees to take possession of the property as is on 1-March-2024. It continues "tenant also agrees to perform maintenance on property and pay for materials required to do maintenance in order to continue to receive discounted rent." It goes on to state that the tenants are responsible for their own utilities.
14. The landlords testify that the tenants did not honour the agreement. They agree that the tenants took possession on 1-March-2024 but say that they, the landlords, were forced to complete the repairs themselves and pay for them, contrary to the amendment. They therefore seek to proceed on the basis that the original \$1800/month agreement is in effect.
15. The tenant testified that his understanding of the agreement was that he would pay if he wanted to "paint something" or "fix something." He understood the agreement to cover "regular maintenance" around the house, but not major appliances like refrigerators or panel boxes.
16. In response to the tenants' claim that they had moved out on 31-January-2025 the landlords say that they received a message from the tenants that they had left on that date and had removed "most" of their possessions, but that they had not attended the premises as of the time of the hearing.
17. The amendment to the lease agreement is vague. It does not, as required by s. 11 of the Act, specify the items to be done in exchange for rent. Where a promise or agreement is ambiguous, the doctrine of *contra proferentem* states that the preferred meaning should be the one that works against the interests of the party that provided the wording. In the present case, the landlords provided the contract and it should be interpreted against their interest.
18. In any event, the landlords failed to provide sufficient evidence that the tenants failed to uphold their part of the agreement. No documentary evidence was provided of any part of the premises in need of maintenance or repair. The portion of the landlords claim for unpaid rent for the year 2024 fails.
19. By their own admission, the tenants did not pay the \$1500 rent for the month of January. Their claim that they seek a refund of rent is irrelevant. They are not entitled to presume their claim will succeed and deduct it from their rent pre-emptively. Their claim that the

landlord's alleged negligence damaged their property is also irrelevant. This portion of the landlord's claim for unpaid rent succeeds in the amount of \$1500.00.

20. The landlords have not attempted to reclaim possession of the premises since the tenants have vacated. Landlords have a duty to attempt to mitigate losses. This includes attempting to re-rent the premises at the earliest opportunity when a tenant vacates without proper notice. They may not claim rent for the period after 31-January-2025.

Issue 2: Vacant Possession

Landlords' Position

21. The landlords testify that they served a valid termination notice (LL#3) on 6-January-2025 electronically by email and text, and that the termination notice gave a move out date of 17-January-2025.

Tenants' Position

22. The tenants submitted that the notice for nonpayment of rent was invalid as they did not believe they were in arrears.

Analysis

23. In order to receive an order for 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*.
24. The landlord submitted a copy of a termination notice (LL#3). LL#3 is in writing in the form prescribed by the minister. It contains the name and address of the recipient. It identifies the residential premises it regards. It identifies itself as being issued under s. 19 of the *Act*. It therefore complies with s. 34.
25. The notice was signed by the landlord. It specifies the date on which the tenancy is to terminate and the tenant is to vacate the premises. The landlord testified that the notice was served on the tenant electronically in accordance with s. 35(2)(f) of the *Act*. It therefore complies with s. 19(4) of the *Act*.
26. The notice was issued on 6-January-2025. At this point, rent had been overdue for 5 days. It gives a move out date of 17-January-2025, which is not less than 10 days after the notice was served. It therefore complies with s. 19(1)(b) of the *Act*.
27. LL#3 complies with all relevant sections of the *Act* and is therefore valid.

Issue 3: Damages

Landlords' Position

28. The landlords claim for \$1000.00 in compensation for damages for cleaning of the premises, which (this was listed on the application as a request for 'other' relief, but claiming for the costs of cleaning a rental premises is a claim for compensation of

damages). They say they hired a company which reviewed the property and found evidence of smoking, contrary to the lease agreement. They seek \$1000.00 as a ballpark amount for what cleaning the premises may cost.

Tenants' Position

29. The tenants deny smoking on the premises yet admit that a guest "might have had a cigarette or two." They claim the apartment was clean when they moved out.

Analysis

30. In accordance with Policy 09-003, to succeed in a claim for damages a landlord must provide sufficient evidence to show the extent of any damage, that the damage was caused by the tenant or a person the tenant allowed on the premises, and the cost of repair or replacement, and this evidence should include documentary evidence wherever possible. Documentary evidence can include photos, videos, receipts, quotes, invoices, etc.
31. The landlords have not provided any evidence that the premises were left in an unclean state. No documentary evidence was provided, and the landlords have no direct knowledge of the state of the premises as they have not attended since the tenants say they vacated. The landlords' claim for damages fails.

Issue 4: Rent Reduction

Tenants' Position

32. The tenant testifies that on 9-December-2024 he served on the landlords a Tenant's Request for Repairs (T#1). This requests that the landlords repair a refrigerator and a fuse box by 9-December-2024.

Landlords' Position

33. The landlords deny that this is their responsibility and that the items are broken. They say the electrical panel is functioning and that the dryer, provided by the tenants, is the source of the problem. They say the refrigerator simply requires that the drainage tube attached to the condenser be cleaned.

Analysis

34. The tenants claim that the items require repair, the landlords say they do not. No documentary evidence was provided by either party. Considering the evidence in its totality, I find that the tenants have failed to demonstrate on a balance of probabilities that the landlords have not met their obligations to maintain the premises in good condition. The tenants' claim fails.

Issue 5: Security Deposit

35. As the landlord is owed moneys, they may apply the security deposit against the sum owed. In this case, the security deposit was \$1000 and was received on 1-March-2024.
36. S. 16(7) of the Act states that the 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. The regulations prescribe a simple cumulative interest rate of 1% annual. Calculated to the date of the hearing, the interest owed is \$9.32.

Decision

37. The landlords' claim for unpaid rent succeeds in the amount of \$1500.00.
38. The termination notice with a move out date of 17-January-2025 is valid. As the tenants occupied the premises past this date, they did so illegally. The landlords' claim for an order of vacant possession succeeds.
39. The landlords' claim for compensation for damages fails.
40. The tenants' claim for a reduction in rent fails.
41. The landlords may apply the security deposit and interest, valued at \$1009.32, against moneys owed.
42. The landlords were partially successful in their claim and therefore may be reimbursed for their hearing expenses. In this case, they claim only the \$20.00 application fee.

Summary of Decision

43. The tenant shall vacate the premises immediately.
44. The tenant shall pay to the landlord any costs charged to the landlord, by the Office of the High Sheriff, should the landlord be required to have the Sheriff enforce the attached Order of Possession.
45. The tenant shall pay to the landlord \$510.68 as follows:

Unpaid Rent.....	\$1500.00
Hearing Expenses.....	\$20.00
Less Security Deposit.....	-(\$1009.32)
 Total.....	 \$510.68

20-February-2025

Date


Seren Cahill
Residential Tenancies Office