

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0025-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:07 pm on 01 April 2021 via teleconference.
2. The applicant, [REDACTED] hereinafter referred to as “the landlord”, participated in the hearing.
3. The respondent, [REDACTED] hereinafter referred to as “the tenant”, also participated.

Issues before the Tribunal

4. The landlord is seeking the following:
 - A determination of the validity of a termination notice issued to her on 01 January 2021,
 - An order for a payment of rent in the amount of \$2000.00,
 - An order for a payment of late fees in the amount of \$75.00,
 - An order for a payment of utilities in the amount of \$150.00, and
 - An order for a payment of \$20.00 for her hearing expenses.

Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
6. Also relevant and considered in this case are sections 18, 21, 31 and 34 of the *Residential Tenancies Act, 2018*.

Issue 1: Validity of Notice

Relevant Submissions

The Landlord's Position

7. The landlord stated that she had entered into a 1-year, fixed-term rental agreement with the tenant on 01 May 2020, and a copy of that executed lease was submitted with her application (█ #1). The agreed rent was set at \$800.00 per month and it is acknowledged in the lease that the tenant had paid a security deposit of \$600.00.
8. With her application, the landlord submitted a copy of an e-mail she had received from the tenant on 01 January 2021 (█ #2). In that e-mail, the tenant informs the landlord that she can no longer live at the rental unit because of a mice issue. She writes that she will be taking the electricity account out of her name on that date and asks if she can meet the landlord to the return the keys to her.
9. The landlord argued that that e-mail is not a valid termination notice as it does not conform to the requirements set out in section 18 of the *Residential Tenancies Act, 2018* (notice of termination of rental agreement).
10. She also argued that if the tenant had issued the notice because she believed that the unit was uninhabitable, then it should still be found that the notice is invalid. The landlord stated that mice entering an apartment does not make it uninhabitable, and she also pointed out that she had been taking steps to address the issue in that she had hired a pest control company to treat the unit. Furthermore, she argued that it was the tenant's fault that the mice entered the apartment as she had been leaving open bags of food in her cupboards which had attracted the mice. She also complained that the tenant was difficult to contact and had frustrated her attempts to get the pest control company to visit the property.
11. The landlord is seeking a declaration that that e-mail issued to her on 01 January 2021 is an invalid termination notice.

The Tenant's Position

12. The tenant claimed that she had been complaining about the mice issue since July 2020, and she claimed that there must have been previous issues with mice as she found numerous traps throughout the unit. She claimed that she was not made aware, when she moved into the unit, that there was an issue with mice at the property.
13. She stated that she found mice droppings in her cupboards and that the mice were in her closets and on her clothing. The tenant claimed that the landlord was not taking her concerns seriously and that she had not done enough to combat the problem. The tenant argued that because the issue with the mice had not

improved and out of a concern for her health and the health of her dog, she vacated the unit on 01 January 2021.

Analysis

14. The landlord is right to point out that the e-mail sent to her on 01 January 2021 does not meet the requirements set out in section 18 of the *Residential Tenancies Act, 2018*. As the tenant was in a fixed-term lease that was not set to expire until 30 April 2021, she could not terminate her agreement, under this section of the *Act*, prior to that date.
15. Section 21 of the *Act*, though, does allow a tenant to terminate her agreement with immediate effect, even if the lease has not yet expired, if the rented premises become uninhabitable.
16. However, regardless of the reason that a tenant is terminating her agreement, any notice of termination has to be in compliance with section 34 of the *Act*, which 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.*

17. As the e-mail sent to the landlord on 01 January 2021 meets none of these requirements, it is not valid.

Decision

18. The e-mail sent to the landlord on 01 January 2021 is not a valid termination notice.

Issue 2: Rent - \$2000.00

Relevant Submissions

The Landlord's Position

19. The landlord submitted rent records with her application (████ #3) showing the payments she had received from the tenant since she had moved in. The

landlord pointed out that in December 2020, she had only received half of the rent, a payment of \$400.00 on 04 December 2020, and she has received no payments from the tenant since that date.

20. The landlord is seeking an order for a payment of the remaining \$400.00 that is owing for December 2020 and she also argued that because the tenant had not given her a proper termination notice, she is also entitled to a payment of rent for January and February 2021.
21. The landlord testified that after the tenant moved out on 01 January 2021, she placed advertisements on Kijiji, NL Classifieds and on Facebook in an attempt to re-rent the unit. She testified that she was able to secure new tenants for 01 February 2021 and these tenants paid her the full rent for that month.

The Tenant's Position

22. The tenant acknowledged that she owes the landlord \$400.00 for December 2020.

Analysis

23. As the tenant acknowledges that she owes \$400.00 for December 2020, that part of the landlord's claim for rent succeeds.
24. Where a tenant vacates rented premises but has not terminated her rental agreement in accordance with the *Residential Tenancies Act, 2018*, she is considered to have abandoned the rented premises and she is liable for any damages which are the result of that abandonment, including any loss of rental income suffered by the landlord.
25. I accept the landlord's claim that she had started to advertise the unit shortly after the tenant moved out and I also accept her claim that she was unable to secure new tenants until 01 February 2021. As the tenant had not given her a valid termination notice, and as she was unable to find new tenants for January 2021, I find that the tenant is responsible for the loss of rental income the landlord suffered for that month. As such, the landlord's claim for \$800.00 for lost rent succeeds.
26. The landlord's claim for rent for February 2021 does not succeed, however, as she suffered no losses during that month.

Decision

27. The landlord's claim for a payment of rent succeeds in the amount of \$1200.00.

Issue 3: Late Fees - \$75.00

Analysis

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

Fee for failure to pay rent

15. (1) Where a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister.

The minister has prescribed the following:

Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed:

(a) \$5.00 for the first day the rent is in arrears, and

(b) \$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00.

29. As the tenant has been arrears since December 2020, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

30. The landlord's claim for late fees succeeds in the amount of \$75.00.

Issue 4: Utilities - \$150.00

Relevant Submissions

The Landlord's Position

31. The landlord stated that after the tenant moved out on 01 January 2021, the electricity account was switched back into her name. Her new tenants then had that account put in their name on 16 February 2021.
32. With her application, the landlord submitted an electricity bill (█ #4), dated 02 February 2021, for the billing period from 26 January to 01 February 2021, showing that she was charged \$35.52. That bill also shows that she had a previous balance owing of \$108.95. The landlord stated that that amount was for the period from when the account was switched back to her name up to 26 January 2021.

33. The landlord is seeking an order for a payment of that full bill—\$144.47.

The Tenant's Position

34. The tenant stated that she cancelled her electricity account on 06 January 2021. She argued that as she was not residing at the unit during January 2021, she should not have to pay for the electricity that being used during that month.
35. She also claimed that this portion of the landlord's claim is excessive as her monthly bills were quite low during her tenancy and never exceeded \$90.00.

Analysis

36. For the same reasons that I found that the tenant was responsible for rent for January 2021, I likewise find that she is responsible for the electrical utilities for that month.
37. The landlord's evidence shows that she was charged \$144.47 for that month and her claim therefore succeeds in that amount.

Decision

38. The landlord's claim for a payment of utilities succeeds in the amount of \$144.47.

Issue 5: Hearing Expenses

39. The landlord paid a fee of \$20.00 to file this application. As her claim has been successful, the tenant shall pay that hearing expense.

Issue 6: Security Deposit

40. The tenant paid a security deposit of \$600.00 on 27 April 2020, and receipt of that deposit is acknowledged in the submitted lease. As the landlord's claim has been successful, she shall retain that deposit as outlined in this decision and attached order.

Summary of Decision

41. The termination notice issued to the tenant on 01 January 2021 is not a valid notice.

42. The landlord is entitled to the following:

a) Rent.....	\$1200.00
b) Late Fees	\$75.00
c) Utilities.....	\$144.47
d) Hearing Expenses	\$20.00
e) LESS: Security Deposit (\$600.00)	
f) Total Owing to Landlord	<u>\$839.47</u>

14 September 2021

Date

