

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0262-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:07 AM on 09 November 2021 via teleconference.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED] [REDACTED], hereinafter referred to as "the landlord".
3. The respondent, [REDACTED], hereinafter referred to as "the tenant", participated in the hearing, as did his fiancée, [REDACTED]

Issues before the Tribunal

4. The landlord is seeking the following:
 - A determination of the validity of a termination notice issued to him on 02 March 2021,
 - A order for a payment of \$680.00 in compensation for inconvenience,
 - An order for a payment of rent in the amount of \$6400.00,
 - An order for a payment of \$8375.00 in compensation for damages,
 - An order for a payment of utilities in the amount of \$1837.55, and
 - Authorization to retain the \$2400.00 security deposit.

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 decision are sections 10, 20, 21 and 34 of the *Residential Tenancies Act, 2018*, and policy 9-3: Claims for Damage to Rental Premises.

Issue 1: Validity of Notice

Issue 2: Rent - \$6400.00

Relevant Submissions

The Landlord's Position

7. The landlord stated that he had entered into a 1-year, fixed-term lease with the tenant at the beginning of May 2020, and a copy of the executed agreement was submitted with the landlord's application. The agreed rent was set at \$3200.00 per month and it is acknowledged in the lease that the tenant had paid a security deposit of \$2400.00.
8. Shortly after the tenancy began, it was agreed that the tenant would also rent the attached salon and the rent was increased to \$3900.00 per month.
9. On 02 March 2021, the tenants sent a message to the landlord informing him that, because of leaks at the property, and because of a mould issue, they were terminating their agreement and would be vacated by 01 April 2021. The tenants moved on 31 March 2021.
10. The landlord stated that after the tenants vacated, he spent several days cleaning up the unit and removing garbage. He also testified that a contractor was at the unit carrying out repairs to fix some leaking, and he had to replace some soffit, fascia and shingles. After the unit was ready to be moved into again, he was in contact with staff at a local TV show, and he was able to rent the unit to that company for 11 June 2021.
11. The landlord argued that the termination notice that the tenants had issued to him was not a proper termination notice and he claimed that he was entitled to a 2-month notice that they were terminating their rental agreement. As he had not received a proper notice, and as the unit sat vacant for the months of April and May 2021, the landlord suffered a loss of rental income in the amount of \$6400.00, and he is seeking an order for a payment of that amount.

The Tenant's Position

12. The tenant stated that while he was residing at the unit there were leaks in several rooms. He claimed that, despite repeated requests for repairs, no work was carried out by the landlord. He also claimed that because of this continuous leaking, mold started to form on ceiling over the kitchen table, and in support of that claim he submitted photographs at the hearing showing the skylight in the kitchen.
13. The tenant claimed that because of these maintenance issues, the unit was uninhabitable, and he claimed that under the *Residential Tenancies Act, 2018*, in those circumstances, he is not required to give the landlord any termination notice whatsoever. He pointed, though, out that he gave notice at the beginning

of March 2021, and he paid rent for that month, but he did not reside there because of the mold issue.

14. With respect to the landlord's claim for rent, the tenant argued that the unit could not be rented because of the maintenance issues and he cannot be held accountable for the time it took the landlord to carry out the required repairs.

Analysis

15. Where there are maintenance issues at a rental unit that a tenant wants to have a landlord address, there are a couple of options a tenant can avail of through the *Residential Tenancies Act, 2018*. For instance, as a landlord has a statutory obligation to maintain a rental unit in a good state of repair, failing to do so could be seen as a material breach of their rental agreement. Section 20 of the Act states that where a landlord commits a material breach, a tenant can give a landlord a written notice of that breach, and if he does not come into compliance within a reasonable period of time, he may terminate the rental agreement by issuing the landlord a 1-month notice.
16. In cases where the landlord's failure to maintain the unit in a good state of repair leads to it becoming uninhabitable, section 21 of the Act states that the tenant can issue a termination notice with immediate effect.
17. In either case, if a tenant is terminating a rental agreement, whether under section 20 or 21, or under any other section of the *Residential Tenancies Act, 2018*, a written notice must be issued which meets the timeframe requirements specified in that section as well as the requirements set out in section 34, 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.*

18. As the message the tenant had sent to the landlord does not meet any of the requirements set out in section 34 of the Act, it is not a valid notice.
19. Where a tenant moves out of a rental property without giving a valid notice of termination, he is considered to have abandoned the unit and he is liable to for any damages caused by that abandonment, including any loss of rental income suffered by the landlord. However, according to statutory condition 4, set out in

section 10 of the *Residential Tenancies Act, 2018*, a landlord has legal duty to mitigate those damages, which means that he must take all reasonable steps to ready the unit for re-rent as quickly as possible, by repairing any damage and by advertising the unit for rent, so he can secure new paying tenants.

20. As I indicate in section 3, below, I was not convinced that the tenants had caused any significant damage to the unit that would have caused any lengthy delays in re-renting the unit. Nevertheless, repairs were required to address the leaking roof and ceiling at the property, and the landlord only attended to those matters after the tenant vacated. While those repairs were being carried out, the unit could not be occupied. As the tenant had not caused those issues, I am of the view that he is not responsible for any loss of income the landlord suffered while those repairs were being carried out.
21. Accordingly, I find that the landlord is not entitled to compensation for the loss of 2 full months of rental income. I find that compensation for the loss of 1 month's rent, for failing to provide a valid termination notice, is more reasonable.

Decision

22. The termination notice issued to the landlord on 02 March 2021 is not a valid notice.
23. The landlord is entitled to \$3200.00 in compensation for the loss of 1 month's rent.

Issue 3: Compensation for Damages – \$8375.00

Relevant Submissions

The Landlord's Position

24. The landlord stated that there were damages caused to the unit during this tenancy and with his application he submitted the following breakdown of the costs to carry out repairs:

• New couch torn	\$2800.00
• Landscaping.....	\$575.00
• Flooring	\$2500.00
• Refrigerator	\$2500.00
Total.....	<u>\$8375.00</u>

New Couch Torn

25. The landlord stated that the tenant had been provided with a couch when the tenancy began, and he claimed that it was only 1 year old and in good condition.

That couch was moved to the garage during this tenancy and when he regained possession of the unit, he discovered that there was a slit on the back of the couch, a couple of inches long. He submitted a photograph with his application showing that damage.

26. The landlord is seeking \$2800.00 for the costs of replacing that couch. The couch has not been replaced, and no receipts or estimates were submitted by the landlord to establish the costs he is seeking here.

Landscaping

27. The landlord stated that the driveway to the rental property is lined with decorative stones and that after the tenancy had ended, much of that stone was found across the street and in ditches.
28. The landlord stated that he hired a landscaping company to rake the stones off the lawn and he submitted a copy of that invoice with his application showing that he was charged \$575.00 to have that work completed.

Flooring

29. The landlord stated that the laminate floors in the salon were installed around 2016, and when the tenant moved in, there were no scratches on those floors. He stated that when the tenants moved out, there were scratches and gouges in these floors and parts of the floors now need to be replaced. He is seeking \$2500.00 to have that work carried out. No quote or estimate was submitted with his application.

Refrigerator

30. The landlord stated that the refrigerator that the tenant was supplied with at the beginning of tenancy was replaced with a smaller one by the tenant during his tenancy. He stated that he was informed by the tenant that the original refrigerator had broken down. The landlord is seeking the costs of replacing the refrigerator and he submitted a copy of a screenshot from Home Depot showing that a new refrigerator would cost \$1995.00. The landlord has not purchased a replacement refrigerator, but he claimed that he had switched it out with one that was in the salon.

The Tenant's Position

New Couch Torn

31. █ stated that the couch was moved to the garage at the beginning of the tenancy and it was not used by them while they lived there. She also stated that there was no rip in the couch when they moved out.

32. █ pointed out that the submitted photograph of the couch, in which the rip is visible, was taken after someone had moved the couch from the garage back into the house. She suggested that it may have been ripped during that move and after this tenancy had ended.

Landscaping

33. The tenant stated that when he moved into the unit, these decorative stones were already strewn across the lawn and he testified that he had spent 2 full days raking the lawn. █ stated that it they were required to plow their driveway during the winter and it was inevitable that these stones would get moved around.

Flooring

34. █ stated that she was unaware of any scratches on the floors in the salon and she pointed out that as there was no incoming/outgoing inspection report, the landlord had failed to establish that this damage was caused during their tenancy.

35. █ also argued that the landlord's claim here is excessive. She stated that the salon is only 150 square feet and given that laminate flooring costs approximately \$2.00 a square foot, it would only cost \$300.00 for the materials to put new floors down.

Refrigerator

36. █ stated that the refrigerator that they were supplied with was much older than 5 years old and she claimed that it was in very poor condition. She testified that the compressor in that refrigerator broke during her tenancy and all of the food that they had inside had spoiled. They replaced that refrigerator with one that they had on hand and they left it there when they moved out. █ stated that they replaced the refrigerator themselves because they knew that the landlord would not respond to their request for a new one, in the same way that he would not respond to their request for repairs.

Analysis

37. Under Section 10.(1)2. of the *Residential Tenancies Act, 2018* the tenant is responsible to keep the premises clean and to repair any damage caused by a willful or negligent act.

2. *Obligation of the Tenant* - The tenant shall keep the residential premises clean, and shall repair damage caused by a wilful or negligent act of the tenant or of a person whom the tenant permits on the residential premises.

Accordingly, in any damage claim, the applicant is required to show:

- That the damage exists;
- That the respondent is responsible for the damage, through a willful or negligent act;
- The value to repair or replace the damaged item(s)

In accordance with Residential Tenancies policy 9-3, the adjudicator must consider depreciation when determining the value of damaged property. Life expectancy of property is covered in Residential tenancies policy 9-6.

Under Section 47 of the *Act*, the director has the authority to require the tenant to compensate the landlord for loss suffered or expense incurred as a result of a contravention or breach of the *Act* or the rental agreement.

Order of director

47. (1) After hearing an application the director may make an order

- (a) *determining the rights and obligations of a landlord and tenant;*
- (b) *directing the payment or repayment of money from a landlord to a tenant or from a tenant to a landlord;*
- (c) *requiring a landlord or tenant who has contravened an obligation of a rental agreement to comply with or perform the obligation;*
- (d) *requiring a landlord to compensate a tenant or a tenant to compensate a landlord for loss suffered or expense incurred as a result of a contravention of this Act or the rental agreement*

38. I agree with [REDACTED] assertion that as there was no report of any incoming or outgoing inspection, the landlord has failed to establish that the tenants had left the unit in any worse of a condition when they moved out than it was in when the tenancy began.
39. Without such a report, I agree with [REDACTED] that the landlord had failed to establish that the rip in the couch occurred during this tenancy, and it is just as likely that it happened after they moved out. The landlord also did not submit any evidence of the costs he is seeking here and I therefore find that that claim fails.
40. Regarding the gravel on the lawn, the tenant stated that there was already gravel on it when he moved in, and I conclude, therefore, that as it was in a similar state when he moved out, the landlord is not entitled to any compensation.
41. The landlord also failed to establish that the scratches on the floor occurred during this tenancy and no evidence was submitted showing that it would cost \$2500.00 to replace those sections of flooring. Hence that claim fails.

42. With respect to the refrigerator, the tenant claimed that it was in poor condition when he moved in and that it broke, through no fault of his own, during this tenancy. As the costs of repairing or replacing appliances that were not damaged by his tenants is a cost a landlord is supposed to bear, that claim also fails.

Decision

43. The landlord's claim for compensation for damages does not succeed.

Issue 4: Compensation for Inconvenience - \$680.00

Relevant Submissions

The Landlord's Position

44. The landlord stated that the tenants had left behind a significant amount of garbage at the property after they had moved out. This garbage included personal possessions, car tires, rugs, and walls from the salon.
45. The landlord stated that he had to collect all of these items and he made 2 trips to the dump to dispose of them. He is seeking compensation for 25 hours of his labour for that work.

The Tenant's Position

46. The tenant stated that there was already a significant amount of garbage at the property when he moved in, approximately 2 trailer loads, and despite his repeated requests, the landlord would not remove it. The tenant figured that some of the garbage that the landlord is referencing here was already there when he moved in.
47. The tenant also pointed out that he had a conversation with the landlord about some of these items when he was moving out, and the landlord had told him that he could leave behind the walls to the salon, the rocking chair and the glass case, as the landlord was able to make use of those items.

Analysis

48. Although there was already some garbage at the unit when the tenant moved in, I accept the landlord's claim that he was required to collect some additional garbage left behind by the tenant and he had to bring it to the dump.
49. I find that compensation for 6 hours of his personal labour to carry out that work is reasonable. Policy with this Section is that a landlord may claim up to \$21.20

in compensation for his personal labour, so his claim succeeds in the amount of \$127.20.

Decision

50. The landlord's claim for compensation for inconvenience succeeds in the amount of \$127.20.

Issue 5: Utilities – \$1837.55

Relevant Submissions

The Landlord's Position

51. The landlord pointed to the submitted lease which states that the tenant was responsible for paying for his own utilities and that the provision of cable and internet were not services which were included in the monthly rent.
52. The landlord failed to cancel his internet and cable subscription when the tenant moved in and he continued to be billed monthly for those services by his cable provider.
53. The landlord submitted a screenshot of his cable billing history showing that he was charged \$1837.55 for the period between April 2020 and February 2021. He is seeking an order for a payment of that amount.

The Tenant's Position

54. The tenant agreed that he was responsible for paying for his own cable and internet. But he argued that he was not required to have those services in place during his tenancy and he could have resided at the unit without them. He also argued that it was not his responsibility to notify the landlord's service provider to request that the landlord's account be cancelled.

Analysis

55. I agree with the tenant in this matter. The landlord was charged monthly for a service that he had ordered from his service provider and if he no longer wanted to be charged for the internet and cable, he should have contacted that provider and cancelled his account.
56. Nothing in the lease states that the tenant was required to have cable or internet accounts himself, and there is no indication in the lease that the tenant was to compensate the landlord for any charges the landlord incurred through his account.

Decision

57. The landlord's claim for a payment of utilities does not succeed.

Issue 6: Security Deposit

58. It is acknowledged in the lease that the tenant had paid a security deposit of \$2400.00 on 30 April 2020. As the landlord's claim for rent and inconvenience has succeeded, he shall retain that deposit as outlined in this decision and attached order.

Summary of Decision

59. The landlord is entitled to the following:

- a) Ren Owing..... \$3200.00
- b) Compensation for Inconvenience \$127.20
- c) **LESS: Security Deposit (\$2400.00)**
- d) Total Owing to Landlords..... \$927.20

31 August 2022

Date

