

Residential Tenancies Tribunal

Application 2022-No.156-NL

Decision 22-0156-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:03 a.m. on 15-June-2022.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.
3. The respondents, [REDACTED] did not attend and [REDACTED] did attend, they are hereinafter referred to as “the landlords.”
4. The landlords submitted an Authorized Representative form (LL#01), they name [REDACTED] as their representative. [REDACTED] attended the teleconference and will hereinafter be referred to as the “authorized representative.”

Preliminary Matters

5. The tenant submitted an affidavit (TT#01) stating that he served the landlords notification of the hearing, electronically on 03-June-2022. The authorized representative confirmed receipt of service.

Issues before the Tribunal

6. The tenant is seeking:
 - Security deposit refund \$700.00
 - Validity of termination notice
 - Compensation for inconvenience \$12,354.42

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
8. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 14: Security deposit, Section 18: Notice of termination of rental agreement and Section 43: Refusal or dismissal of application, as well as, Residential Tenancies Policy 9: Claims for compensation.

Issue 1: Security deposit refund \$700.00

Tenant's Position

9. The tenant submitted a copy of the rental agreement (TT#02). He said that he moved into the house on 10-March-2021 and signed a term agreement until 31-March-2022. The tenant said that he paid a daily rate of rent for the first partial month of March and thereafter paid \$1,400.00 a month with utilities included. He said his rental period is from the 1st day of the month until the last and that rent is due, in full, on the 1st day of each month. The tenant said that on 10-March-2022 he paid a security deposit of \$700.00.
10. The tenant said that the landlord terminated the rental agreement and that he moved 30-September-2021. To date the landlord has not refunded the security deposit.
11. The tenant is seeking full reimbursement of the security deposit.

Landlords' Position

12. The authorized representative confirms the details of the rental agreement. The authorized representative reports that the non-payment of the security deposit was an oversight on behalf of the landlords. They agree that this money is to be paid in full to the tenant.

Analysis

13. There is no dispute, both parties agree that the tenant shall be reimbursed the full security deposit in accordance with Section 14 of the *Residential Tenancies Act, 2018*.

Decision

14. The tenant's claim for security deposit refund \$700.00 succeeds.

Issue 2: Validity of termination notice

Tenant's Position

15. The tenant said that when he signed the lease he was expecting to remain in the house for the full year. He said it was only a few months later when the landlord contacted him, in mid-June, to tell him that they were giving him 3 months' notice and that they were putting the house for sale.
16. The tenant said that the message came in through Facebook and on 01-July-2022 another message was sent through Facebook (TT#03) from the landlord with a reminder that this was the beginning of the 3 months' notice. They gave 01-October-2021 as the termination date.

17. The tenant said that he had checked with Residential Tenancies and that he was the one who told the landlord that the notice was to be on the first day of the rental period. He said he later found out that a three month notice doesn't apply to a term agreement.
18. The tenant said he didn't tell the landlord that the three month notice doesn't apply to term agreements, because they have the same access to the Board as he does and they could find out this information for themselves.
19. The tenant said he did not agree to the notice.

Landlords' Position

20. The authorized representative said that the landlords understand that the notice given through Facebook is not in perfect order with the *Act*. He said that this is how communication occurred between the parties and that the communication was always informal and friendly.
21. The authorized representative said, that when the tenant told the landlords that they weren't giving notice in accordance with the *Act*, they immediately followed the guidelines, which the tenant said, needed to be followed.
22. The authorized representative said, that the landlords informed the tenant of a three month notification for the first time on 10-June-2021. He provided the Facebook message (LL#02). He said that the landlords were going through a tough time with lay-offs and decided to sell the house.
23. The authorized representative provided another message on 21-June-2021(LL#03) where the tenant lays out the guidelines for giving a termination notice. He said that once they were aware of the guidelines, outlined by the tenant, they followed those rules.
24. The authorized representative questions why would the tenant find out that these guidelines do not apply to a term agreement in June 2021 and not pass that information on to the landlords. He questions why this issue is being raised a year later.

Analysis

25. Section 18 of the *Residential Tenancies Act, 2018*, is as follows:

Notice of termination of rental agreement

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

(a) not less than 4 weeks before the end of a rental period where the residential premises is rented from week to week;

(b) not less than 3 months before the end of a rental period where the residential premises is rented from month to month; and

(c) not less than 3 months before the end of the term where the residential premises is rented for a fixed term.

Not less than 3 months before, means that a landlord can, at any time up to 3 months before the end of a term agreement give notice. In this instance, the landlord can tell the tenant, anytime up to 01-January-2022 that the agreement will end on 31-March-2022. The agreement can't be broken before the agreed end date.

Notice of termination of rental agreement

18. (5) *Notwithstanding subsections (1) to (3), a notice of termination is not required to be given where a landlord and a tenant agree in writing to terminate the rental agreement on a specific date.*

The landlord and tenant could have agreed to an earlier termination date, however, the tenant stated in paragraph 19, that he did not agree to the notice.

Notice of termination of rental agreement

18. (9) *In addition to the requirements under section 34, a notice under this section shall*

(a) be signed by the person providing the notice;

(b) be given not later than the first day of a rental period;

(c) state the date, which shall be the last day of a rental period, on which the rental agreement terminates and the tenant intends to vacate the residential premises or the date by which the tenant is required to vacate the residential premises; and

(d) be served in accordance with section 35.

A notice given on Facebook would not have meet the above requirements concerning service of documents.

Decision

26. The termination notice given for the rental premises is not valid.

Issue 3: Compensation for inconvenience \$12,354.42

Tenant's Position

27. The tenant said that his employer moved him at their expense to Newfoundland. He is claiming the cost of moving himself and his family into his new accommodations.

28. The tenant said that when he received his notice he started looking for new accommodations, he said that there were no available rentals and that they decided to buy because it looked like his employment in Newfoundland would be extended.

29. The tenant said that he put a bid in on the house in mid-July and that the close date was 17-September-2021.

30. The tenant provided the following breakdown of his expenses:

Item #	Description of Inconveniences	Compensation Claimed
1	Lawyer Fees for Purchase of New House	\$3,315.00
2	Building Inspector Costs of New House	\$603.75
	MOVE SPECIFIC COSTS	
3	Air BnB	\$365.18
4	U-Haul	\$247.70
5	Moving Supplies	\$20.68
6	Fuel	\$103.52
7	Fuel	\$75.00
8	Food	\$42.50
9	Movers	\$500.00
10	Personal Time	\$3,000.00
11	Fuel	\$401.27
12	Food	\$382.97
13	House Cleaning	\$500.00
	OTHER COSTS	
14	Time away from house when others present	\$1,000.00
15	Time off work to allow entry of others into rented premise	\$628.65
16	Fuel Costs for travel away from house when being shown	\$100.00
17	Phone Charges	\$230.00
18	Time for conversing with landlords and NL Tenancy Board	\$838.20

31. The tenant is claiming for the cost of the lawyer and the home inspector for the purchase of the home. He did not provide receipts.
32. The tenant is claiming for two night's accommodations at an Airbnb while their belongings were in transit, as well as his food. He did not provide receipts.
33. The tenant is claiming for a U-Haul and the supplies to secure and protect the furniture while in transit. He did not provide receipts.
34. The landlord is claiming for fuel (Lines 6, 7, 11, 16) for moving, as well as, while his wife was out of the home while it was being shown. He did not provide receipts.
35. The tenant is claiming the cost of three individuals who assisted with the move. He did not provide receipts.
36. He is claiming for personal time (lines 10, 13, 14, 15 & 18).
37. He is claiming for phone charges as he contacted Residential Tenancies while he was working out of province. He did not provide receipts.

Landlords' Position

38. The authorized representative questions, which of these expenses would the tenant not have incurred if the tenancy had occurred on 31-March-2022.
39. The authorized representative, questions what evidence is the tenant providing to show that there were no available houses to rent, so therefore, he had to buy. The authorized representative points out that on 30-July-2021 that the landlord had sent him a message saying that there is a house just up the street for rent (LL#03).
40. The authorized representative also inquires, where are the receipts and documentation to show that the expenses were incurred.
41. The authorized representative states that the landlords, throughout the entire process, acted in good faith, they may not have followed the Act to the letter, however, they were in a tough situation and always tried to accommodate the tenants. He questions the validity of this claim.

Analysis

42. I agree with the questioning by the authorized representative. The claims are without merit, the tenant did not provide any evidence of expense and although the tenant was given an invalid notice, he was aware that it was not valid and made the conscious decision not to inform the landlord of his concern. The tenant's action upon receiving the termination notice is contradictory to his testimony given at the hearing. The tenant testified that he disagreed with the termination notice, however his actions demonstrated that the termination was accepted and not disputed by not contesting the termination notice at the time it was issued, and not filing an application with the Residential Tenancies Office prior to the move out date. He followed through with the termination and only later decided to apply for the compensation of expenses related to purchasing a home. I further note that the costs related to the purchase of a home are not the direct result of the termination of a rental agreement and the tenant would not be entitled to recovery of such costs regardless.
43. Section 43 of the Residential Tenancies Act, 2018; states

Refusal or dismissal of application

43. The director may refuse to accept an application under section 42 or may dismiss an application at any time where, in the director's opinion, the matter is trivial, frivolous, vexatious or has not been initiated in good faith, and may issue an order to that effect.

44. I find that the tenant's application for compensation from the landlord is not in good faith and is denied.

Decision


45. The tenant's claim for compensation fails.

Summary of Decision

46. The termination notice served to the tenant for 01-October-2021 is not valid.
47. The landlord shall reimburse the tenant the \$700.00 security deposit.

June 16, 2022

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office