

Residential Tenancies Tribunal

Application 2022 No. 1082NL
Application 2023 No. 18NL

Decision 22-1082-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:05 AM on 07 February 2023 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing. The landlord's agent, [REDACTED] ("[REDACTED"]"), also participated.
3. The respondent, [REDACTED], hereinafter referred to as "the tenant", was also in attendance.

Issues before the Tribunal

4. The landlord is seeking the following:
 - A determination of the validity of termination notice,
 - An order for a payment of rent in the amount of \$2200.00,
 - An order for a payment of \$150.00 in late fees,
 - An order for a payment of \$1119.86 in compensation for damages,
 - An order for a payment utilities in the amount of \$200.00, and
 - Authorization to retain the \$825.00 security deposit.
5. The tenant is seeking an order for a refund of the \$825.00 security deposit.

Preliminary Matters

6. The landlord amended his application at the hearing and stated that he was seeking a payment of utilities in the amount of \$202.26.

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

Issue 1: Validity of Termination Notice

Relevant Submissions

The Tenant's Position

9. The landlord and tenant entered into a 1-year, fixed-term rental agreement on 20 July 2022, and a copy of that executed lease was submitted with the landlord's application. The agreed rent was set at \$1100.00, due on the 20th day of each month, and it is acknowledged in the lease that the tenant had paid a security deposit of \$825.00.
10. The tenant testified that on 18 September 2022 she contacted the landlord and informed him that she had discovered mold growing in the porch and some mold in the bathroom. In response, the landlord instructed her to use a specific brand of mold cleaner to wash away the mold. However, the tenant pointed out that she and her son have respiratory issues, and continued to get sick while residing at the unit. On 10 November 2022, she visited her doctor, and he informed her on that date that she can no longer continue to reside at the property. A letter from this doctor was submitted with her application.
11. As a result of that consultation with her doctor, the tenant sent the landlord a text-message on 10 November 2022 informing him that she was terminating her agreement and that she would be vacating on 20 November 2022. The tenant vacated on that date.

The Landlord's Position

12. The landlord acknowledged that there was a small amount of mold on a wall in the porch. He stated that this mold appeared as the previous tenant had been stacking boxes in that area, and there was no air circulation. He claimed that he had merely overlooked that area when he had cleaned and prepared the unit for the tenant to move into. The landlord claimed that this mold was merely surface mold, and after he had washed that area in the porch, the mold has not returned.
13. With respect to the termination notice the tenant had issued him, the landlord argued that the notice was not valid as it was only a 10-day notice, and he

claimed that as the tenant was in a fixed-term lease, he was entitled to at least 2 months' notice that the tenant was terminating their agreement.

14. The landlord is seeking a determination of the validity of that notice.

Analysis

15. Although not specifically argued by the tenant at the hearing, she indicated that the presence of mold in the porch and bathroom had made the unit unfit for habitation, and she was therefore entitled to terminate her lease for that reason. Section 21 of the *Residential Tenancies Act, 2018* states:

Notice where premises uninhabitable

21. (1) Notwithstanding subsection 18(1) and paragraph 18(3)(a), where a landlord contravenes statutory condition 1 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 effective immediately.

...

(3) In addition to the requirements under section 34, a notice under this section shall

- (a) *be signed by the person providing the notice;*
- (b) *state the date 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*
- (c) *be served in accordance with section 35.*

and section 34 of the Act, as referenced here in subsection 21.(3), 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.*

16. On review of the text-message sent by the tenant, I note that it meets none of the stated requirements set out in section 34. For that reason, it is not a valid notice.

Decision

17. The text-message sent to the landlord on 10 November 2022 is not a valid termination notice.

Issue 2: Rent - \$2200.00

Relevant Submissions

The Landlord's Position

18. The landlord stated that after the tenant moved out, he carried out some cleaning and minimal repairs at the unit, and on 04 December 2022 he placed advertisements on Facebook Marketplace. He testified that he was able to secure a new tenant for 03 January 2023, and a new tenancy started on that date. In that tenancy, the rent is set at \$1200.00, and it is due on 3rd day of each month.
19. The landlord argued that because the tenant had not given him a proper 2-month notice that she terminating their agreement, he is entitled to a payment of rent for the period from 20 November to 19 December 2022, and from 20 December 2022 to 19 January 2023—a total of \$2200.00.

The Tenant's Position

20. The tenant stated that, given that the landlord did not secure new tenants until 03 January 2023, it “makes sense” that she would owe rent for December 2022. However, she claimed that █ had informed her, after she had issued the termination notice, that is was ok for her to vacate the unit.

Analysis

21. I determined in the previous section that the termination notice issued to the landlord on 10 November 2022 was not valid. As such, when the tenant vacated the unit on 20 November 2022, she is considered to have abandoned it, as the tenancy had not been properly terminated in accordance with the *Residential Tenancies Act, 2018*. Where a tenant abandons a rental unit, she is liable for any damages caused by that abandonment, including any loss of rental income suffered by the landlord, so long as the landlord had mitigated those damages by taking all reasonable steps to secure new paying tenants.
22. By posting advertisements in early December 2022, I find that the landlord had met his duty to mitigate, and I also accept his claim that he was able to secure

new tenants for 03 January 2023. As such, I find that the landlord is entitled to a payment of rent, in lieu of proper notice, up to that date.

23. I calculate the amount owing to be \$1606.24 (\$1100.00 for the period running from 20 November 2022 to 19 December 2022 and \$506.24 for the rental period beginning 20 December 2022 (\$1100.00 per rental period x 12 rental periods = \$13200.00 ÷ 365 days = \$36.16 per day x 14 days)).

Decision

24. The landlord's claim for a payment of rent succeeds in the amount of \$1606.24.

Issue 3: Late Fees - \$150.00

Relevant Submissions

25. The landlord has assessed late fees in the amount of \$150.00.

Analysis

26. 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.*

27. As the tenant has been arrears since 21 November 2022, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 4: Utilities - \$202.26

Relevant Submissions

The Landlord's Position

29. The landlord stated that the tenant had cancelled her electricity account on 20 November 2022, and after that date it was put back in his name, and he was charged for the electricity used at the unit after that date.
30. With his application, the landlord submitted a Newfoundland Power bill showing that he was charged \$85.41 for the period from 20 November to 06 December 2022, and another bill for \$116.85 for the period from 06 December 2022 to 01 January 2023. He is seeking an order for a payment of \$202.26 for those 2 bills.

The Tenant's Position

31. The tenant made no comment on this portion of the landlord's claim, except to point out that she was not living at the unit during the period from 20 November 2022 to 01 January 2023.

Analysis

32. I determined in section 2, above that the tenant had abandoned the rental unit and had not properly terminated her agreement. As the landlord was unable to secure new tenants until 03 January 2023, I concluded that the tenant was responsible for rent up to that date. I reach the same conclusion about the utilities. As such, the landlord's claim succeeds in the amount of \$202.26.

Decision

33. The landlord's claim for a payment of late fees succeeds in the amount of \$202.26.

Issue 5: Compensation for Damages - \$1119.86

Relevant Submissions

The Landlord's Position

34. When this tenancy began, the landlord and the tenant carried out a walkthrough of the unit, and the incoming portion of a condition report was filled out at that time. Numerous deficiencies were noted at that time—tiles in the kitchen were cracked, the glass door in the laundry room is cracked, the handle is missing from the refrigerator, there is a crack on a shelf in the tub, there are many scratches and marks on the floors in the living room, and some baseboard is

missing in that room as well, and there is noted damage to the walls. The floors in the dining room are marked and scratched, the wall behind the door in the master bedroom had been noticeably repaired, and there is a big scratch on the floor in bedroom #2.

35. When the tenant vacated, another walkthrough was conducted by █ and the tenant. █ testified that it was noted in the outgoing section of the report that there is now a new hole behind the door in the master bedroom, there was a TV mount on the wall in the living room, and the towel rack in the bathroom was broken. Additionally, after the condition report was completed and signed, █ also added that some caulking was required in the bathtub and a T-moulding was broken in bedroom #3.
36. With his application the landlord submitted a breakdown of the costs of carrying out the following repairs after the tenant vacated:

• Bathtub caulking.....	\$160.00
• House cleaning	\$120.00
• Living room wall damage	\$160.00
• New hole in wall in master bedroom	\$160.00
• Material for wall repair.....	\$175.94
• Master door frame damage.....	\$160.00
• Materials for door frame repair.....	\$100.73
• Towel rack repair.....	\$20.00
• T-moulding repair.....	\$40.00
• T-moulding materials.....	\$23.19
 Total.....	 <u>\$1119.86</u>

Bathtub caulking

37. The landlord stated that after the tenant discovered mold on the bathtub caulking, she had re-caulked it herself, but had used the wrong type of caulking. He had to again re-caulk that tub after the tenant vacated. The landlord is seeking \$160.00 in compensation for 8 hours of his personal labour.

House cleaning

38. The landlord is seeking \$120.00 in compensation for 6 hours of █'s personal labour to clean the apartment after the tenant vacated. █ stated that the oven required cleaning, and she claimed that it took her 2 hours carry out that work. She also stated that it took her an additional 4 hours to clean the floors and walls. No photographs were submitted with the landlord's application showing the oven or the floors. █ acknowledged that cleaning was not noted on the outgoing inspection report.

Living room wall damage

39. The landlord stated that the tenant had installed a TV wall mount in the living room during her tenancy and she did not remove it when she vacated. He claimed that the mount is unusable as it is not level, and it needs to be removed and the wall needs to be repaired. That work has not yet been carried out, but the landlord estimates that it would take him 8 hours. █ testified that this issue was identified on the outgoing portion of the condition report before it was signed by the tenant. The landlord stated that the rental unit was last painted in 2020.

Hole in master bedroom

40. The landlord stated that after the walkthrough was conducted, he had gone to the unit and he noticed that there was a new hole behind the door in the master bedroom. He stated that this item was added to the condition report after it was signed by the tenant. The landlord is seeking compensation for 8 hours of his labour to repair this wall, and he submitted screenshots from a hardware store website showing that it would cost \$123.95 + tax to purchase some joint tape, drywall compound, a gallon of paint and a trowel. This work has not yet been carried out.

Door frame

41. The landlord stated that damage to a door frame was also overlooked during the walkthrough, and this was added to the condition report after it had been signed. The landlord is seeking compensation for 8 hours of his personal labour to repair that door frame and he submitted screenshots showing that it would cost \$100.73 + tax for a gallon of paint and a pine door jamb. That work has not yet been carried out.

Towel rack repair

42. The landlord also stated that a damaged towel rack was also overlooked during the walkthrough, and this item was added to the report after it had been signed. The landlord repaired that rack by installing new wall anchors, and he is seeking compensation for 1 hour of his personal labour.

T-moulding repair

43. A broken T-moulding was also overlooked, and that issue was also subsequently added to the condition report by the landlord. That moulding has not been replaced, but the landlord is seeking compensation for 2 hours of his labour to repair it, and he submitted a screenshot showing that a replacement would cost \$23.19 + tax.

The Tenant's Position

44. The tenant stated that when she had conducted the walkthrough with [REDACTED] on 20 November 2022, there were no comments inserted into the inspection report.

Bathtub caulking

45. The tenant claimed that the photographs submitted by the landlord showing the caulking in the bathtub were photographs that were actually taken by her before she had re-caulked it. She stated that she had sent these photographs to the landlord in September 2022. She also claimed that after she had re-caulked the bathtub, the landlord had informed her that she had done a "perfect" job. The tenant also stated that there was no discussion of the caulking during the outgoing walkthrough, and the comments were inserted after it was signed.

House cleaning

46. The tenant claimed that the unit was thoroughly cleaned after she had moved out and she stated that there was no discussion with [REDACTED] at that time about the cleanliness of the unit.

Living room wall damage

47. The tenant acknowledged that the TV wall mount was left behind. But she claimed that on the day of the walkthrough she had offered to leave it there for the landlord's new tenants to use, or she could remove and repair the holes. She testified that [REDACTED] informed her that she would speak with the landlord and would inform her later about how they wished to proceed. She testified that no one ever got back to her about the matter. She also claimed that the issue of the wall mount was not noted on the condition report when she signed it. [REDACTED] acknowledged that she had informed the tenant that she would ask the landlord about the wall mount. The tenant also claimed that the TV mount was indeed level during her tenancy.

Hole in master bedroom

48. The tenant pointed out that on the incoming portion of the inspection report, it is noted that there is a noticeable repair to the wall behind the door. She surmised that the damage the landlord is identifying through this portion of his claim was there already when she moved in.

Doorframe

49. The tenant stated that the doorframe was in the same condition when she moved out as it was when she moved in.

Towel rack repair

50. The tenant acknowledged that this towel rack was damaged during her tenancy and she did not contest the costs the landlord is seeking here.

T-moulding repair

51. The tenant claimed that there never was a T-moulding in the bedroom identified by the landlord. She claimed that when she first moved in, she had taken a broken moulding from the porch and put it in this bedroom. She merely forgot to return it to the porch when she vacated.

Analysis

52. 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

53. At the hearing, the landlord acknowledged that no deficiencies were noted on the outgoing portion of the condition report after the walkthrough was conducted. He testified that the items identified on that report were added after that walkthrough, and after it was signed by the tenant. Accordingly, that report does nothing to support the landlord's claim that the tenant had caused any damages to the unit during her tenancy, and, in fact, it just supports the contrary conclusion.

54. Accordingly, I conclude that the tenant is not responsible for the costs of re-caulking the bathtub, nor for any cleaning, nor for repairing any holes in any walls, nor for the damage to the doorframe. With respect to the wall mount, [REDACTED] acknowledged that she had informed the tenant that she would reach out to her later, after she consulted with the landlord, and she agreed with the tenant that she never did contact her about it afterwards. I also conclude, then, that the tenant is not responsible for the costs the landlord is seeking here to have the wall mount removed.

55. Although it was not noted during the walkthrough, the tenant did acknowledge that she had damaged the towel rack, and she did not contest the costs the landlord is seeking for its repair. As such, his claim succeeds in the amount of \$20.00.

Decision

56. The landlord's claim for compensation for damages succeeds in the amount of \$20.00.

Issue 6: Security Deposit

57. The tenant had paid a security deposit of \$825.00 on 17 July 2022, and receipt of that deposit is acknowledged in the submitted rental agreement. As the landlord's claim has been successful, he shall retain that deposit as outlined in this decision and attached order.

Issue 7: Hearing Expenses

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

Summary of Decision

59. The termination notice issued to the landlord on 10 November 2022 is not valid.

60. The landlord is entitled to a payment of \$1098.50, determined as follows:

a) Rent Owing	\$1606.24
b) Late Fees.....	\$75.00
c) Utilities	\$202.26
d) Compensation for Damages	\$20.00
e) Hearing Expenses	\$20.00
f) LESS: Security Deposit..... (\$825.00)	
g) Total Owing to Landlord.....	<u>\$1098.50</u>

10 March 2023

Date

[Redacted]
John R. Cook
Residential Tenancies Tribunal