

Residential Tenancies Tribunal

Application 2023 No. 21NL

Decision 23-0021-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:05 AM on 08 February 2023 via teleconference.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as "landlord1" and "landlord2", respectively, participated in the hearing. The respondent, [REDACTED], hereinafter referred to as "the tenant", was also in attendance.

Issues before the Tribunal

3. The landlords are seeking the following:
 - A determination of the validity of a termination notice the tenant had issued them on 29 December 2022,
 - An order for a payment of rent in the amount of \$1100.00,
 - An order for a payment \$1175.00 in compensation for damages, and
 - Authorization to retain the \$550.00 security deposit.

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this case is section 23 of the *Residential Tenancies Act, 2018* and policy 9-3: Claims for Damage to Rental Premises.

Preliminary Matters

6. The tenant had filed a counterclaim to this application, 2023 No. 74NL, but had failed to serve it on the landlords prior to the hearing date. As such, that application was dismissed.

Issue 1: Validity of Termination Notice

Relevant Submissions

The Landlords' Position

7. The landlords and the tenant entered into a monthly rental agreement on 01 September 2021, and a copy of that agreement was submitted with the tenant's application. The agreed rent was set at \$1100.00 per month, and it is acknowledged in rental agreement that the tenant had paid a security deposit of \$550.00.
8. On 01 November 2022, the landlords issued the tenant a 3-month termination notice, requiring that he vacate on 31 January 2023.
9. On 29 December 2022 the tenant issued his own termination notice to the landlords, and a copy of that notice was submitted with the landlords' application. That notice was issued under section 23 of the *Residential Tenancies Act, 2018* (notice where landlord contravenes peaceful enjoyment and reasonable privacy), and it had an effective termination date of 31 December 2023. The tenant vacated on 31 December 2022.
10. Landlord2 claimed that they had never interfered with the tenant's peaceful enjoyment and she pointed out that during this tenancy, they had only been in his apartment once, and that was after they had issued him a 24-hour notice to enter.
11. The landlords are seeking a determination of the validity of that notice.

The Tenant's Position

12. The tenant stated that the reason he had issued the landlords this termination notice was because they had turned off the power to the clothes dryer on 3 different occasions. He stated that after the third time it was turned off, landlord1 had sent him text-messages in which he was cursing and swearing, and he had threatened that that he was "going to f-ing come in" and remove the dryer.
13. The tenant testified that he did not feel safe or comfortable with landlord1 speaking to him in that manner and he claimed that it showed a lack of respect. Because of the behaviour of landlord1, the tenant no longer wished to reside at the unit, and that was the reason he had issued this termination notice.

Analysis

14. Section 23 of the *Residential Tenancies Act, 2018* states:

Notice where landlord contravenes peaceful enjoyment and reasonable privacy

23. (1) *Notwithstanding subsection 18(1) and paragraph 18(3)(a), where a landlord contravenes statutory condition 7(b) 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 on a specified date not less than 5 days, but not more than 14 days, after the notice has been served.*

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

(a) be signed by the tenant;

(b) state the date on which the rental agreement terminates and the tenant intends to vacate the residential premises; and

(c) be served in accordance with section 35.

15. I pointed out to the parties at the hearing that a termination notice under this section of the *Act* must specify a termination date which is “not less than 5 days, but not more than 14 days, after the notice has been served.” That means that on 29 December 2022, the earliest date that could be specified would be 04 January 2023, and the latest date would be 12 January 2023.
16. The termination notice issued by the tenant states that he is terminating the tenancy on 31 December 2023, almost a year after the notice was issued, making that notice invalid. But even if this was an unintentional slip, and what was intended was 31 December 2022, that notice would still be invalid as it was issued 4 days too soon.

Decision

17. The termination notice issued the landlords on 29 December 2022 is an invalid notice.

Issue 2: Rent - \$1100.00

Relevant Submissions

The Landlords' Position

18. Landlord2 stated that on 03 or 04 January 2023, just a couple of days after the tenant moved out, they placed advertisements on Facebook Marketplace to re-rent the apartment. She testified that she was able to secure new tenants for 01 February 2023, but the unit sat vacant for the month of January 2023 and they suffered a loss of rental income for that month.
19. The landlords are seeking an order for a payment of rent, in lieu of proper notice, for January 2023, in the amount of \$1100.00.

The Tenant's Position

20. The tenant made no comments on this portion of the landlord's claim.

Analysis

21. I determined in the previous section that the termination notice issued to the landlords on 29 December 2022 was not valid. As such, when the tenant vacated the unit on 31 December 2022, he 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, he is liable for any damages caused by that abandonment, including any loss of rental income suffered by the landlords, so long as the landlords had mitigated those damages by taking all reasonable steps to secure new paying tenants.
22. By posting advertisements in early January 2023, I find that the landlords had met their duty to mitigate, and I also accept their claim that they were able to secure new tenants for 01 February 2023. As such, I find that the landlords are entitled to a payment of rent, in lieu of proper notice, up to that date.

Decision

23. The landlord's claim for a payment of rent succeeds in the amount of \$1100.00.

Issue 3: Compensation for Damages - \$1175.00

Relevant Submissions

The Landlord's Position

24. The landlords claimed that the tenant had caused some damages to the unit during his tenancy, and with their application they provided the following breakdown of the costs to carry out the required repairs:

- Plaster and paint \$200.00
- Replace kitchen floor..... \$700.00
- Repair living room floor \$100.00

- Cleaning..... \$100.00
- Replace blinds..... \$75.00
- Total \$1175.00

Plaster and paint

25. Landlord2 stated that she repainted the apartment after the tenant moved out, but she claimed that she also had to do some plastering as the tenant had damaged numerous walls and trims in the apartment. She claimed that there was a gouge in the gyproc in the porch, that the tenant had been uses tacks to hang up a sheet over a window in one room, and there were various other nicks and marks on the walls. In support of their claim that these walls were damaged, the landlords pointed to their photographs submitted with their application. The landlords are claiming \$200.00 for the costs of the plastering supplies. No receipts were submitted with their application. Landlord2 stated that the unit was last painted 6 years ago.

Replace kitchen floor

26. Landlord2 stated that the tenant had torn the cushion floor in the kitchen and he had attempted to glue it down. That floor now needs to be replaced and the landlords are seeking \$700.00 in compensation. No photographs were submitted showing this damage. That floor has not yet been replaced and no estimate or quote was submitted with the landlords' application. Landlord2 stated that this floor was 6 years old when the tenancy ended.

Repair living room floor

27. Landlord2 stated that there are scratches on the laminate floor in the living room that were not there when the tenant moved in. No photographs were submitted showing that damage. Landlord2 stated that she has purchased a touch-up marker to repair these scratches, but that work has not yet been carried out. No receipt was submitted with the landlords' application for the tough up marker, but they are seeking \$100.00 in compensation. These floors were installed 6 years ago.

Cleaning

28. Landlord2 stated that she had hired her niece to clean the unit after the tenant moved out, and she testified that she had paid her \$100.00 for 4 hours of her labour. No receipt was submitted with her application. Landlord2 stated that the cupboards had to be cleaned out, the floors needed to be mopped, the bathtub was dirty, and the windows needed cleaning too. She did acknowledge that the refrigerator and oven were cleaned.

Replace blinds

29. Landlord2 stated that the blinds in the bedroom are no longer able to move up and down. She is seeking \$75.00 for the costs of replacing them. These blinds have not been replaced and no receipt or estimate was submitted with their application. These blinds were 6 years old when the tenancy ended.

The Tenant's Position

Plaster and paint

30. The tenant acknowledged that he was responsible for some of the marks on the walls, but he claimed that some of the damage that the landlords were complaining about were there already when he moved in.

Replace kitchen floor

31. The tenant claimed that floor tore because it was not installed properly and because there were bubbles underneath it. He argued that if it had been properly laid in the first place, this damage would not have happened.

Repair living room floor

32. The tenant stated that he was responsible for some of the scratches on the living room floor, but he claimed that these floors were already scratched when he moved in.

Cleaning

33. The tenant claimed that he had cleaned the unit before he vacated, though he did admit that he had overlooked the bathtub and he stated that the floors maybe needed to be mopped.

Replace blinds

34. The tenant claimed that the blinds were working fine during his tenancy and he denied that they were damaged when he moved out.

Analysis

35. 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

36. With respect to the plastering and painting, the landlords' evidence does show that there are some nicks and marks on some walls and trim work. However, a landlord is expected to repaint a rental property every 3 to 5 years, and as these walls were last painted 6 years ago, I find that this is work that the landlords would soon have had to carry out anyhow.
37. With respect to the floor in the kitchen, the floor in the living room and the blinds, the landlords submitted no photographic evidence showing that damage and they submitted no quotes or estimates showing the costs that they would incur to have these items replaced or repaired. Hence, those claims do not succeed.
38. With respect to the cleaning, the tenant admitted that the floors needed to be mopped and that the bathtub needed cleaning, and I therefore find that the landlords are entitled compensation for 2 hours of labour to address those items.

Policy with this Section is that a landlord may claim up to \$21.70 for each hour of their labour, so this portion of their claim succeeds in the amount of \$43.40.

Decision

39. The landlords' claim for compensation for damages succeeds in the amount of \$43.40.

Issue 4: Security Deposit

40. The tenant paid a security deposit of \$550.00 on 27 July 2021 and receipt of that deposit was acknowledged in the submitted rental agreement. As the landlords' claim has succeeded, they shall retain that deposit as outlined in this decision and attached order.

Issue 5: Hearing Expenses

41. The landlords paid a fee of \$20.00 to file this application. As their claim has been successful, the tenant shall pay this hearing expense.

Summary of Decision

42. The termination notice issued to the landlords on 29 December 2022 is not a valid notice.
43. The landlords are entitled to a payment of \$613.40, determined as follows:

a) Rent Owing	\$1100.00
b) Compensation for Damages	\$43.40
c) Hearing Expenses	\$20.00
d) LESS: Security Deposit.....	(\$550.00)
e) Total Owing to Landlords	<u>\$613.40</u>

09 March 2023

Date


John R. Cook
Residential Tenancies Tribunal