

Residential Tenancies Tribunal

Application 2023-0029-NL

Decision 23-0029-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 1:48 p.m. on 15-February-2023.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.

Preliminary Matters

4. The tenant submitted an affidavit stating that she served the landlord with notification of today’s hearing electronically, to the landlord’s email address, on 01-February-2023. The landlord confirms receipt of notification as stated by the tenant.
5. The landlord e-transferred the tenant reimbursement for the security deposit and utilities prior to the start of the hearing. These items have been removed from the tenant’s application.

Issues before the Tribunal

6. The tenant is seeking
 - Validity of termination notice
 - Rent refunded \$3,600.00
 - Compensation for inconvenience \$2,359.32
 - Other \$565.80
 - Hearing expenses \$40.00

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 8: Types of rental agreements, Section 10 Statutory conditions, Section 16: Rental increase, and Section 18: Notice of termination of rental agreement.

Issue 1: Validity of termination notice

Tenant's Position

9. The tenant provided a copy of the written rental agreement (TT#02) which shows she began renting the apartment for a year term on 01-September-2020 ending on 31-August-2021. She then directed us to the landlord's copy of the renewal the following year (LL#01 exhibit #5) which shows that both parties signed a renewal for the following year 01-September-2021 – 31-August-2022. The tenant also supplied (TT#03) a text message dated 28-June-2022 between herself and the landlord, where the tenant states she would like to continue the rental agreement into the next year and the landlord replies "Absolutely."
10. The tenant pays \$900.00 a month rent which includes internet and cable. She said she never received cable. Her rent is due in full the 1st day of each month. She also paid a security deposit of \$400.00 on 01-August-2020. The tenant states that the agreement shows \$450.00 however, her recollection is that it was \$400.00. The tenant said that the landlord sent her a refund of the security deposit and she will accept the money transfer after today's hearing.
11. The tenant was having an issue with mold and she raised her concerns with the landlord. The landlord hired a contractor to look into this. The landlord made arrangements for the tenant to move into another apartment until the work was completed on her current apartment.
12. The tenant provided an email from the landlord (TT#03) which states that they are not in an agreement and that the tenant is in a short term agreement for the temporary apartment for 3 months. In the agreement the landlord outlines compensation of \$40.00 for the shared use of a washer and dryer. It states that the lease ends as of 15-February-2023 and that should the tenant wish to move sooner she may do so with only one week's notice. Also provided is a text message from the landlord to the tenant sent 10-November-2022 stating that the original apartment doesn't have mold and that the upcoming renovation will be long and expensive; therefore this is her official notice to terminate their agreement.
13. The tenant did find a new apartment and subsequently moved the end of December 2022.

Landlord's Position

14. The landlord agrees with the terms of the rental agreement. She said that she is surprised that the tenant didn't have cable; she said that she has been paying for cable for the unit and will have to check into this. The landlord said that they were not in a yearly term lease after 31-August-2022. She said that the tenant had raised some concerns about the possibility of mold. The landlord explained she never signed another

lease agreement or amendment because she wasn't sure that the apartment would be fit for habitation due to the concerns of mold and the ongoing work of contractors. The landlord said that they were in a monthly lease beginning 01-September-2022.

15. When the landlord began the investigation for mold with the contractor, she made arrangements for the tenant to move into an apartment belonging to a friend of hers. The landlord said she paid rent to her friend for the temporary apartment and the tenant continued to pay rent to her.
16. The landlord provided information from her contractor (LL#01 exhibit #4) saying that there didn't appear to be mold in the apartment. There was surface mold on some of the tenant's belongings that they believed this to be a circulation issue. The landlord explained that the tenant had her boyfriend living there and that there was excess belongings in the apartment. The landlord wanted to ensure that the apartment didn't have mold and requested that the contractor do test holes in the walls. She said that although there was no mold discovered, the apartment is in an older home and it was discovered during the mold investigation that it required upgrades. She said that the renovations are still ongoing.

Analysis

17. The first issue to be resolved is what type of rental agreement are the landlord and tenant bound by. Section 8 of the Residential Tenancies Act, 2018 states:

Types of rental agreement

- 8. (1) A landlord may enter into a rental agreement where a residential premises is rented***
 - (a) from week to week;***
 - (b) from month to month; or***
 - (c) for a fixed term of not less than 6 months.***
- (2) Where a residential premises is rented for a period that is***
 - (a) less than one week, the residential premises shall be considered to be rented from week to week;***
 - (b) more than one week and less than 6 months, the residential premises shall be considered to be rented from month to month; and***
 - (c) more than 12 months, the residential premises shall be considered to be rented for a fixed term of 12 months.***
- (3) Where a tenant continues to use or occupy a residential premises after a fixed term has expired, and notice of termination of the rental agreement***
 - (a) has not been given, the relationship of landlord and tenant shall continue under the terms and conditions in the rental agreement, but the tenancy may be terminated by giving notice in accordance with paragraph 18(1)(b) or 18(2)(b); or***
 - (b) has been given, the relationship of landlord and tenant shall continue under the terms and conditions in the rental agreement until the expiration of the notice period.***

18. The landlord and tenant enjoyed the security of a term lease for 2 years. The tenant's text (TT#03) shows in the third year both parties agree that they are interested in continuing in a yearly lease agreement. Being in agreement to enter a lease, and actually entering a lease are not the same. I accept the landlord's reasoning that she was not interested in continuing for a year term, as she was unsure of what the contractor's findings might be and she couldn't ensure that there would be an apartment available to rent.
19. I also deduce from their actions of not amending and signing a lease in September that the intent to continue the lease was not present. The year previous at the end of the first year term, both parties signed and amended the contract, it is reasonable that they would have followed the same process of amending and signing if it was the intent of both parties to continue in a yearly term. In accordance with the *Act Section 8 (3) (a)* says after a fixed term has expired and no notice has been given the tenancy will continue under the same terms with a monthly agreement.
20. In addition to this, the landlord outlines that the temporary rental is for a fixed short term agreement; under the *Act Section 8 (1) (b)* it states if the rental is for more than one week and less than 6 months the rental is also monthly. I therefore find that in both situations the landlord and tenant are in a monthly rental.
21. In a monthly rental a landlord may terminate a rental agreement under Section 18 of the Residential Tenancies Act, 2018, 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.*

...

(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.***

22. In a monthly agreement, the notice is to be given not later than the first day of the rental period and be for not less than 3 months. This notice was given on 10-November-2022

and therefore would not come into effect until 01-December-2022. Additionally, the notice is to be signed by the landlord and state the date that the rental agreement terminates which is to be the last day of a rental period. The earliest date could have therefore been 28-February-2023. The text message sent by the landlord doesn't contain any of the necessary information and therefore is not valid.

Decision

23. The termination notice is not valid.

Issue 2: Rent refunded \$3,600.00

Tenant's Position

24. The tenant said that from September – December her living arrangements were unstable and that she spent most of that time packed and preparing to move. The tenant said that because of this upheaval she didn't enjoy her rental and is seeking full refund of the rent paid.
25. The tenant said that she was told she would be moving 18-October-2022 and then due to issues in the other unit, the dates kept changing from 01-November-2022 to the weekend of 05-06 November and finally on 06-November-2022 she was told she had to be out that day because they were removing the walls the next day.
26. The tenant said that just a few days after moving into the temporary apartment she was given her termination notice.

Landlord's Position

27. The landlord said that once the investigation of the issue of potential mold started other structural issues arose and the apartment required additional work; she points out that the tenant raised the issue of mold and no mold was found.
28. The landlord questions what else she could do. Her friend's apartment required work, the contractor there had some personal issues arise and therefore the dates when the tenant was to move kept changing. She provided an email from the contractor (LL#03 exhibit 9). She said that she immediately took the complaint of her tenant seriously and made arrangements for her accommodations during the upheaval, she said she gave the tenant her notice and made it easy for the tenant to get out of the contract with only a weeks' notice because of the situation.

Analysis

29. Section 16 of the Residential Tenancies Act, 2018 states:

Rental increase

16. (5) Where a landlord discontinues a service, privilege, accommodation or benefit or a service, privilege, accommodation or benefit is unavailable for a period of time, and the discontinuance or unavailability results in a reduction of the tenant's use and enjoyment of the residential premises, the value of the discontinued service, privilege, accommodation or benefit is considered to be an increase in the amount of rent payable.

(6) The director may, upon hearing an application under section 42, **value a service, privilege, accommodation** or benefit discontinued or unavailable for a time under subsection (5).

30. The landlord did act with contentiousness when making arrangements for the tenant's accommodations. She did find a suitable and comparable living space and accommodated for the loss of services i.e. the loss of personal use of a washing machine and resulting shared use was compensated with \$40.00 per month credit to the rent. The landlord, however, did not accommodate the loss of enjoyment and inconvenience experienced by the tenant during the changeover. I agree with the tenant that having to pack and move is a time consuming inconvenience. I also concur that preparing to move and for the date to then be changed repeatedly due to unforeseen issues would be frustrating and would reduce the use and enjoyment of your rental.
31. I don't agree with the evaluation of 4 months' rent. Although the tenant was in flux this uncertainty only extended from 18-October until 06-November, not for the entirety of her tenancy. I will value this lack of accommodation for 50% of the rent cost for the two week period impacted. $\$900.00 \text{ rent} \times 12 \text{ months} = \$10,800.00 \text{ per year}$. $\$10,800.00 \text{ per year} \div 52 \text{ weeks} = \207.69 a week . $2 \text{ weeks} \times \$207.69 = \415.38 . $50\% \times \$415.38 = \207.69 .
32. I find that the landlord shall refund \$207.69 to the tenant for loss of service/accommodation during the two weeks when her move out date was changing.

Decision

33. The tenant's claim for rent refunded succeeds in the about of \$207.69.

Issue 3: Compensation for inconvenience \$2,359.32

Tenant's Position

34. The tenant submitted a list for compensation for inconveniences as follows:

Item	
Breaking lease early	\$1,600.00
Moving costs	490.00
Food (no stove)	\$69.32
Cleaning (bond street)	200.00
Total	\$2,359.32

35. The tenant said that she is seeking \$200.00 a month for the remainder of the lease (January – August) as her new apartment is \$1,100.00 a month.
36. The tenant is seeking the cost of having friends move her into the new apartment. She provided hand written receipt and the breakdown of expenses (TT#06) as follows: November 6 Truck \$50 + \$80 labor1 + \$80 labor2 = \$210.00 November 08 SUV \$30.00 + \$60.00 labor3 = \$90.00 and November 17 Car \$10.00 + labor4 \$20.00 = \$30.00 for a total of \$330.00 plus 8 hours personal labor from the tenant costing \$160.00. Total cost \$490.00. The tenant said that initially she had someone who offered to help for free, but because of the change of dates she had to find people who would help her for a charge.

37. The tenant also submitted for meals for her first two days in the temporary apartment. She said there was no working stove and the landlord required two days before she had a replacement delivered. She provided the transactions from the bank and the receipt for her supper meals totaling \$69.32 for the two day period.
38. The tenant also submitted for 10 hours cleaning and provided pictures of the temporary apartment (TT#08 and TT#09). She said that the apartment was filthy. She is seeking \$200.00 compensation.

Landlord's Position

39. The landlord questions why there was a cost for movers. She submits a text between herself and the tenant (LL#01 exhibit 8) where she offers the help of a moving company and the tenant said it wasn't necessary because she had arrangements made with a friend. The landlord did explain that she wasn't able to offer this service because her move date and the tenant's move date didn't coincide.
40. The landlord said that the tenant did request another stove and she did have the one from the first apartment delivered after two days.
41. The landlord does acknowledge that the tenant cleaned the temporary apartment before moving in to help speed up the process.

Analysis

42. The tenant has shown that the new apartment is more expensive than the previous rental, however, as shown in paragraph 22 the termination notice was not valid and would only have been valid as of the 28-February-2023. Therefore she would only be eligible for additional rent up to that time, however, it was the tenant's decision to move by the end of December 2022 (paragraph 13). The additional cost of the rental for those two months are therefore the burden of the tenant as the landlord was willing to rent to the tenant until the end of the three months.
43. The cost of the movers was incurred because the dates the tenant was supposed to move kept changing. The tenant provided receipts to show the costs incurred for the move. The landlord had initially shown intent to pay for this cost (LL#01 exhibit 8) however once the moving dates didn't line up the tenant bore the responsibility for the move. As the landlord was having work completed in the apartment, which determined the move, the cost of this expense should have fallen to the landlord. I find that the landlord shall reimburse the cost of \$490.00 to the tenant.
44. The tenant and landlord both confirm that the stove wasn't working and required replacement. The tenant lost this service which was included in her rental and therefore in accordance with Section 16 as per paragraph 29, the landlord shall compensate the tenant for this inconvenience.

45. Finally both parties agree that the tenant worked towards preparing the temporary rental for her tenancy. The maintenance of a rental property is the burden of the landlord as per Section 10 of the Residential Tenancies Act, 2018, as follows:

Statutory conditions

10. (1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:

1. Obligation of the Landlord -

(a) The Landlord shall maintain the residential premises in a good state of repair and fit for habitation during the tenancy and shall comply with a law respecting health, safety or housing.

46. I therefore agree with the tenant that the landlord shall reimburse her for the cost of her time totaling \$200.00.

47. The landlord shall reimburse the tenant \$759.32 in compensation for inconvenience as follows:

- Moving costs \$490.00
- Food 69.32
- Cleaning 200.00
- Total \$759.32

Decision

48. The tenants claim for inconvenience succeeds in the amount of \$759.32

Issue 4: Other \$565.80

Tenant's Position

49. The tenant is seeking from the landlord 50% of the cost of her tenant's insurance totaling \$565.80. The tenant said that she repeatedly requested a copy of the rental agreement (TT#11) and a copy of the contractor's findings for her claim. She said she never received either from the landlord and her claim for damaged belongings was closed.

Landlord's Position

50. The landlord said she didn't give her a rental agreement because they were no longer in a rental agreement. She said that the contractor's report wouldn't have assisted the tenant because the report shows no mold.

Analysis

51. The tenant submitted a rental agreement (TT#02) to this tribunal for the purpose of this hearing. As she had a copy of the agreement for the tribunal, this copy could have been used for the purpose of her claim. The Residential Tenancies Act 2018, states that at

the conclusion of a year term the agreement can continue on a monthly basis. This should have been sufficient for the insurance claim. Additionally, as the landlord points out, the contractor claim would have shown no mold and that the issue was poor circulation, this documentation would not have supported her claim. The tenant has failed to show that the landlord was responsible for the damages or for the closure of the insurance claim. The request for reimbursement fails.

Decision

52. The tenant's claim for reimbursement of her tenant's insurance fails.

Issue 5: Hearing expenses reimbursed \$40.00

53. The tenant submitted the receipt for \$20.00 for the cost of the hearing (LL#04) and \$20.00 for gas to travel to our office. Pursuant to policy 12.01, as the tenant's claim has been successful she is entitled to reimbursement of the \$20.00 cost of the application fee from the landlord.

Summary of Decision

54. The landlord shall pay to the tenant \$987.01 as follows:

- Rent \$207.69
- Comp for inconvenience 759.32
- Hearing expenses 20.00
- Total \$987.01

February 24, 2023

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office