

Residential Tenancies Tribunal

Application 2023-1062-NL

Decision 23-1062-00

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 2-January-2024.
2. The applicants, [REDACTED] hereinafter referred to as the landlords, attended by teleconference.
3. The respondent, [REDACTED] hereinafter referred to as the tenant, also appeared by teleconference.

Issues before the Tribunal

4. Should the landlords be granted compensation for inconvenience?
5. Should the landlords be granted compensation for damages?

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).

Issue 1: Inconvenience

Landlord's Position

7. The landlords claim for \$900.00 based on the allegation that the tenant did not provide adequate notice. Rent was set at \$1800.00 a month payable biweekly in two installments of \$900.00. The landlords gave the tenant a three month termination notice on 17-October-2023. On 20-October-2023 the tenant gave notice that she was intending to leave by 1-November-2023. The landlord therefore claims for the \$900.00 of rent they expected to receive from the tenant for the first two weeks of November.

Tenant's Position

8. The tenant submitted that her notice was adequate. She says her termination notice was under s.23 of the *Act*, which requires that notice be not less than 5 days and not more than 14.

Analysis

9. The tenant's notice was a text message. This text message was not provided to me but the uncontradicted testimony of the landlords that the notice did not identify as being a notice under s.23. Section 34(d) of the *Act* requires that a notice under the *Act* state the section under which the notice is given. The tenant's notice is therefore invalid.
10. Under s. 18(1)(c) of the *Act*, a tenant is required to give not less than 2 months' notice before terminating a fixed-term lease. That was not received in this case. Where notice is not received, the landlord is entitled to recover costs in lost rent that they are unable to mitigate. The landlords in this case claim for \$900.00 for the first two weeks of November, which I find to be reasonable.

Issue 2: Damages

Landlord's Position

11. The landlords claim for \$850.00 in damages, consisting of \$200.00 for cleaning, \$100.00 to replace stools the tenant painted without permission, \$50.00 to repair holes caused by wall-mounting a television, and \$500.00 for damage to the flooring.

Tenant's Position

12. The tenant denies that she failed to clean the apartment before vacating. She says the only damage was general wear and tear. She also says that she had thought the stools were garbage, that they were not functional, and that she took it upon herself to repair them. According to her testimony the paint was necessary as underneath was untreated and damaged wood. She acknowledges that she did not have the landlords' explicit permission to install a wall-mounted television but that she understood it to be within the scope of the landlord's general instruction to "hang pictures, make yourself at home, paint if you want to" and that the landlord had asked not to be bothered with every small matter. The landlord acknowledges the first comment but denies asking not to be bothered with small matters.

Analysis

13. The landlords testified the tenant left the apartment in a dirty state, whereas the tenant testified she cleaned thoroughly. No photographic evidence was provided. While the landlords did say that they had pictures and could send them on request, applicants have a responsibility to ensure all evidence is submitted prior to the hearing. It is not practical or prudent to suspend hearings for evidence to be submitted. This would lead to undue delay that would prejudice the other party, particularly if they began to testify

before having had a chance to review the evidence. The photos the landlords said they had could therefore not be admitted. In the absence of such evidence, I find that the landlord has not met their burden to prove the allegation on a balance of probabilities. The claim for \$200.00 in cleaning fees is denied.

14. The tenant's uncontradicted testimony was that the stools were broken and heavily damaged, even to the extent that the legs fell off one of them, and she renovated them out of frugality. I accept the tenant's account and deny the claim for \$100.00 for the stools, as the tenant's improvements saved otherwise valueless furniture. The landlord suffered no loss and is therefore entitled to no compensation.
15. In the absence of an agreement to the contrary, the tenant is responsible for repairing damage to walls caused by wall-mounting a television. There was no such agreement here, so the tenant is responsible for restoring the damage. The landlord's claim for \$50.00 to repair the wall is granted.
16. The landlord claims an estimated \$500.00 for the repair of damaged flooring, consisting of water-damaged laminate in the basement and several "scratches" to laminate flooring upstairs. The tenant disputes all of this save for some damage upstairs which she admits was probably caused by her children throwing an unknown object. Given this admission I accept that the upstairs damage is the tenant's responsibility, but without additional evidence I do not find that the landlord has proven on a balance of probabilities that the tenant caused damage to the flooring in the downstairs. The landlord's claim for the cost of restoring damaged flooring succeeds in part for \$250.00.

Decision

17. The landlord's claim for \$900.00 in inconvenience is granted.
18. The landlord's claim for damages partially succeeds in the amount of \$300.00.
19. As the tenant owes the landlord moneys, the landlord is entitled to apply the security deposit to the amount owed. The security deposit in this case was \$1350.00. The remainder of the security deposit must be returned to the tenant.

Summary of Decision

20. The landlord shall pay to the tenant \$150.00 as follows:

Security Deposit.....	\$1350.00
Inconvenience.....	-(\$900.00)
Damages.....	-(\$300.00)
Total.....	\$150.00

24-January-2024 _____
Date


Seren Cahill
Residential Tenancies Office