

Residential Tenancies Tribunal

Application 2023-1138-NL
2023-1220-NL

Decision 23-1138-00

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 10-Jan-2024.
2. The applicant, [REDACTED] appeared via teleconference on behalf of herself and the co-applicant [REDACTED] hereinafter referred to as the tenant.
3. The respondent, [REDACTED] hereinafter referred to as the landlord, appeared via teleconference.

Preliminary Matters

4. In the initial counterclaim application, another party, [REDACTED] hereinafter referred to as the property manager, was named. At the hearing it was clarified that the purpose was not to have the property manager be a party, but to appear as a witness.

Issues before the Tribunal

5. Should the tenant's claim for reimbursement for the cost of a toilet be granted?
6. Is the termination notice dated 13-October-2023 valid?
7. Should the landlord's claim of one month of rent be granted?
8. What is the disposition of the security deposit?

Legislation and Policy

9. 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: The Toilet

Tenant's Position

10. The tenant's representative submitted that the apartment's previous toilets were in poor condition and that replacing them is the duty of the landlord. They therefore seek a refund of the \$400 paid towards the cost of the toilets.

Landlord's Position

11. The landlord testified that the toilets were operating acceptably, but the tenant had been asking for an upgrade with a higher seat for his own comfort. The landlord said he had offered to allow the tenant to pick the model he preferred and they would split the cost, which came to a total of \$800.00 for both toilets.

Analysis

12. The landlord and the representative for the tenant provided hearsay evidence of the understanding between the tenant and the property manager. Under s. 46(2)(c) of the *Act*, this tribunal is empowered to accept this evidence. I do so, but due to the inherently unreliable nature of hearsay evidence, I give it reduced weight. The property manager testified that the toilets were operational but that the tenant agreed to split the cost of an upgrade. This is testimony of an event he personally observed.
13. Considering the evidence in its entirety, I accept as fact that the toilet upgrade was not necessary, was done at the request of the tenant, and that the tenant agreed to split the cost of the upgrade.

Issue 2: Validity of Termination Notice

Landlord's Position

14. The landlord submits that the tenant's termination notice dated 13-October-2023 is invalid.

Tenant's Position

15. The tenant acknowledged the termination notice gave insufficient notice.

Analysis

16. To be valid, a termination notice must comply with the *Act*. T#1 is a termination notice dated 13-October-2023. It states an intention to end the tenancy on 13-November-2023. It does not state the section of the *Act* it is given under, which is sufficient to render it invalid under s. 34(d) of the *Act*. Further, it gives only one month's notice, whereas s. 18(1)(c) of the *Act* provides that in the event of a fixed term lease, a tenant must give two months' notice when terminating without cost.

Issue 3: Rent

Landlord's Position

17. The landlord requests \$1800 in unpaid rent for the month of 14-November-2023 to 14-December-2023 on the basis that they did not receive adequate notice of the tenant's intention to terminate.

Tenant's Position

18. The tenant acknowledges the two-month notice requirement. However, they also submit that the property manager nevertheless agreed to do a walkthrough on or about 13-November-2023 and that at that time the property manager disclosed that they had new tenants moving in the next day.

Analysis

19. The tenant failed to provide adequate notice. However, this does not automatically mean the landlord is able to recover moneys from the tenant. The landlord can only recover a legitimately suffered loss that they were unable to mitigate. In this case, by finding new tenants, the landlord successfully mitigated that loss. The landlord cannot collect the full rent from two separate parties.

Issue 4: Security Deposit

20. The tenant does not owe any moneys to the landlord. The security deposit of \$1350.00 must be returned to the tenant in full.

Decision

21. The tenant's claim for reimbursement for the cost of a toilet fails.
22. The termination notice dated 13-October-2023 is invalid.
23. The landlord's claim for unpaid rent fails.
24. The security deposit of \$1350.00 must be returned to the tenant in full.
25. As the tenant has been successful in part, they are entitled to have costs awarded. The tenant asks for the \$20.00 hearing fee, \$30.00 for the services of a Commissioner of Oaths, and \$38.99 for registered mail. Receipts were provided for all these costs.

Summary of Decision

26. The termination notice dated 13-October-2023 is invalid.

27. The landlord shall pay to the tenant \$1438.99 as follows:

Security Deposit.....\$1350.00

Hearing expenses.....\$88.99

Total.....\$1438.99

18-January-2024

Date



Seren Cahill
Residential Tenancies Office