

Residential Tenancies Tribunal

Application 2023-1196-NL
2024-0090-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 2-May-2024 at 9:03 am.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as the landlords, attended via teleconference, as did their witness [REDACTED].
3. The respondents, [REDACTED] and [REDACTED], also attended via teleconference.

Issues before the Tribunal

4. Is the termination notice dated 26-October-2024 valid?
5. Should the landlords' claim for unpaid rent and utilities be granted?
6. Should the tenants' counterclaim for the refund of rent be granted?
7. What is the proper disposition of the security deposit?

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).
9. Also considered and referred to in this decision are sections 18 and 35 of the *Act*, as follows:

Notice of termination of rental agreement

18. (1) A tenant shall give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises

(a) not less than 7 days before the end of a rental period where the residential premises is rented from week to week;

(b) not less than one month before the end of a rental period where the residential premises is rented from month to month; and

(c) not less than 2 months before the end of the term where the residential premises is rented for a fixed term.

(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.

(3) Notwithstanding subsections (1) and (2), where the residential premises is a site for a mobile home

(a) a tenant shall give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises not less than one month before the end of a rental period; and

(b) a landlord shall give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises not less than 6 months before the end of a rental period.

(4) Notwithstanding paragraph (3)(b), the director may, upon hearing an application by the tenant under section 42, determine that a 6 month notice period would result in undue hardship for the tenant, and may make an order extending the notice period.

(5) Notwithstanding subsections (1) to (3), a notice of termination is not required to be given where a landlord and a tenant agree in writing to terminate the rental agreement on a specific date.

(6) Notwithstanding subsections (1) to (3), a landlord and tenant may agree in writing to a longer notice period.

(7) Where a landlord gives a tenant notice that the rental agreement is terminated under subsection (2) or paragraph (3)(b), the applicable notice period in subsection (1) or paragraph (3)(a) continues to apply in respect of the tenant.

(8) Notwithstanding that the notice period required under subsection (1) is longer than one month, a tenant and any other tenants in the same residential premises may terminate a rental agreement by giving one month's notice to the landlord under the following circumstances:

(a) the tenant's income is reduced as a result of ill health and the notice to the landlord is accompanied by evidence of the tenant's reduction in income;

(b) the income of a person who has been providing financial assistance towards the payment of the tenant's rent is no longer able to provide financial assistance due to ill health and the notice to the landlord is accompanied by evidence of the ill health of the person who has been providing financial assistance;

(c) the tenant is required to reside with a family member because of the ill health of the family member and the notice to the landlord is accompanied by evidence of the ill health of the family member;

(d) the tenant is admitted permanently into a home that provides personal care for the aged and the notice to the landlord is accompanied by evidence of the tenant's admission into the home; or

(e) the tenant dies and the notice to the landlord is accompanied by evidence of the tenant's death.

(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.

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.

Issue 1: Validity of the Termination Notice

10. T#1/LL#1 was presented as a termination notice. It is an email addressed to the landlords by the tenants. It states that due to personal circumstances, the tenants need to move and hope to reach an agreement with the landlords regarding the lease.

11. Under s. 18(1)(c), in a fixed term lease agreement, a tenant must provide a notice of termination of no less than two months. Failure to provide sufficient notice can result in a tenant being held liable for rent during periods where they do not have possession of the premises, subject to the landlord's duty to mitigate loss.

12. S. 34 requires that any notice issued under the *Act* meet four basic requirements. One of these requirements is s. 34(d), that a notice shall state the section of the *Act* it is given under. T#1 does not state the section of the *Act* it was given under. It is therefore not in compliance with s. 34 of the *Act*, rendering it invalid.

Issue 2: Unpaid Rent and Utilities

Landlords' Position

13. The landlords claim rent at a rate of \$3500 a month for the five months of December to April inclusive and utilities for same, a total claim of \$19,220.53. Receipts for the utilities amounts were provided (LL#6). They base this claim on the tenants' failure to provide adequate notice. They testified that they attempted to mitigate their costs by finding new tenants but were unable to find anyone before May.

Tenants' Position

14. The tenants assert that the landlord entered the property without notice on or about 25-November-2023. They say this was a breach of a material term of the rental agreement and that the agreement was thereby terminated. The landlords admits entering without notice but testified that he believed the property to have been abandoned at this time.

Analysis

15. Where a tenant wishes to terminate a rental agreement due to a material breach by a landlord, they must provide notice to terminate under s. 20(1) of the *Act*. That did not occur in this case.
16. The landlord is entitled to proper notice of termination. In the absence of proper notice, they may recover rent in lieu of notice. The only remaining issue is the unusually long duration for which the landlords claim.
17. The landlords claim rent for five months. They say they were unable to find new tenants any sooner. They explained that while the market is current favorable to landlords, low-income housing is what is mainly in demand, and this property necessarily carries a high price point. At \$3500/month, they say, they were merely breaking even. They say they were operating as recommended by their realtor.
18. Even given the landlords' valid points, I am not convinced on a balance of probabilities that they could not have found a new tenant to mitigate some of their losses before 1-May-2024. Three months' notice is reasonable. In lieu of notice, I award rent and utilities to the landlords for the months of December, January, and February in the amount of \$11720.74.

Issue 3: Rent Refund

19. The tenants submit that the landlord made an illegal rent increase in May 2023, with notice only provided on 26-April-2023. At this point they were told the \$3000/month rent would be increased to \$3500/month. S. 16(3)(b) of the *Act* reads as follows:

Rental increase

16.(3) Where a landlord increases the amount of rent payable by a tenant, the increase shall be effective on the first day of a rental period, and the landlord shall give the tenant written notice of the increase

(b) not less than 6 months before the effective date of the increase where the residential premises is rented from month to month or for a fixed term.

- 20. For their part, the landlords conceded they may have violated the *Act*.
- 21. As the landlords did not provide the appropriate six months' notice, the tenants must be compensated for the rental increase for those six months. The tenants' claim succeeds in the full amount of \$3000.

Issue 4: Security Deposit

- 22. The tenants have made an application for the return of the security deposit. The landlord submits that they intend to make a claim for damages against the security deposit and still have time to do so, as the lease did not end until May 2024. S. 14 of the *Act* requires that where a tenant makes an application for the return of a security deposit, the deposit must be returned unless the landlord makes a claim against the deposit within 10 days. No such claim was received in this case, so the security deposit must be returned to the tenant. The security deposit in this case is \$3000.
- 23. The regulations set an interest rate of 1% cumulative simple interest for the year of 2024. Interest for the year to the date of the hearing (123/366 days) on the \$3000 deposit is therefore \$10.08.
- 24. For clarity, it should be noted that the landlord is still able to make a claim for damages not against the security deposit.

Decision

- 25. The termination notice dated 26-October-2024 is invalid.
- 26. The landlords' claim for unpaid rent and utilities succeeds in the amount of \$11720.74.
- 27. The tenants' claim for a refund of rent succeeds in the amount of \$3000.
- 28. The tenants' claim for a return of the security deposit succeeds in the amount of \$3000.


Summary of Decision

- 29. The termination notice dated 26-October-2024 is invalid.

30. The tenants shall pay to the landlord \$5710.66 as follows:

| | |
|--------------------------------|------------|
| Unpaid Rent and Utilities..... | \$11720.74 |
| Less Refund of Rent..... | -\$3000.00 |
| Less Security Deposit..... | -\$3010.08 |
| Total..... | \$5710.66 |

28-June-2024
Date



Seren Cahill
Residential Tenancies Office