

## **Residential Tenancies Tribunal**

Application 2023-1197-NL

Decision 23-1197-00

Seren Cahill  
Adjudicator

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### **Introduction**

1. Hearing was held on 17-January-2024 at 1:45 pm.
2. The applicant, [REDACTED] hereinafter referred to as the landlord, appeared via teleconference.
3. The respondents, [REDACTED] and [REDACTED] hereinafter referred to as the tenant, also appeared via teleconference.

### **Issues before the Tribunal**

4. Should the landlord's claim for damages be granted?
5. Should the landlord's claim for unpaid rent be granted?

### **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: Damages**

#### Landlord's Position

7. The landlord submitted that the tenants owed her \$507.00 in damages. \$407 of this claim based on the tenants' alleged failure to clean the apartment before they vacated. The landlord testified that she paid \$407.00 for cleaning services. This was for 11 hours of work each by two people at a rate of \$18.50/hr. The remaining \$100 was stated to be for the plastering of a wall damaged by the installation of a wall-mount for a tv. A receipt for an e-transfer was provided (LL#2 page 9) though it is for the amount of \$500. The landlord provided pictures of the house in a state of uncleanliness (LL#1 and LL#3).

### Tenant's Position

8. The tenants testified that they had a family member revisit the apartment on the date of 14-November-2023 and did the final walk-through as well as some cleaning. This family member was provided as a witness and testified in support of this. Pictures (T#1-40) they acknowledge the fridge and stove were not fully cleaned. They say a representative of the landlord told them that the damage from the wall mount was "no problem" at the time of move out.

### **Analysis**

9. There is an inconsistency in the evidence in this matter. The tenants and their witness testified that their pictures were taken on 14-November-2023, and all parties acknowledged that neither the tenants nor an agent of them were on the property after this date. The landlord testified that her photos were taken during the last week of November 2023. Yet the landlord's photos show a level of dirt that is not present in the tenant's photos, and the dirt in the landlord's photos looks like what one would expect to be the result of years of living and not something that could appear within a week or two. In particular, this is best illustrated by LL#3 page 28 and T#19, two shots from different angles of the same toilet (while the premises has multiple bathrooms, the surroundings, tiles, and even a small but distinctive pair of black dots on the underside of the toilet seat are a perfect match).
10. This discrepancy was raised in the hearing and the landlord submitted that the apparent difference in cleanliness is an illusion caused by the fact that the tenant's photos are taken from further away, resulting in a lower resolution. I cannot agree. While it is possible some dirt is obscured by the limits of the tenant's pictures, all of what is shown in the landlord's photos simply could not be present invisibly in the tenants'. For instance, the landlord's photo LL#3 page 28 shows staining of the toilet bowl above the water line. These stains are large enough that they would be obvious in T#19, yet the bowl appears to be pristine. Given that the tenants would not have had access to the apartment after the date of 14-November-2023, it cannot be that their photos were taken later than they claimed. The tenant suggested that the landlord actually took her photos on 4-November-2023, pointing to a place in text messages provided by the landlord where she gives notice to the tenants that she will be entering to take pictures on that date, despite the tenant's warning that the property was still in need of cleaning (LL#2 pages 46 and 47). The landlord says she changed her mind and did not take pictures at that time. I conclude that the landlord must be mistaken as to the date her pictures were taken.
11. The tenants' agent testified that she worked as a housekeeper, and that she spent 45 minutes cleaning the apartment on 14-November-2023 before taking the photos. The landlord disputed this, saying she could only have been there 15 minutes. Regardless of the duration of her visit, I accept that she did some cleaning and take T#1-T#40 to be the results. These photos do not show a perfectly clean house. As acknowledged by the tenants, the stove and fridge needed more attention. The black dots I mentioned in paragraph 9 appear to be some kind of dirt or stain. Several floors have occasional specks of dirt and dust. Overall, though, the premises were mostly clean. The tenants'

agent suggested that it would not take anywhere near 22 person hours to finish cleaning the premises. I agree. Based on the evidence provided, I conclude an industrious person could finish cleaning the apartment in no more than 5 hours.

12. The tenants did not meaningfully contest their liability for the damage caused by the wall mount aside from the property manager saying that it was "not a problem." Without more, I do not consider such a comment to waive the right to recover.

## **Issue 2: Rent**

### Landlord's Position

13. The landlord submitted that the tenants owed rent for the second half of November in the amount of \$475.00. She points out that the tenant agreed to pay for the entire month of November in a text message (LL#2 page 45) dated 18-October-2023.

### Tenant's Position

14. The tenants submitted that they gave a termination notice (T#41) to the landlord's property manager, who is also her partner, with a termination date of 15-November-2023, and therefore owes no rent from that date onwards.

### **Analysis**

15. A previous agreement to pay rent until the end of November is not enforceable if the tenant afterward provided a valid termination notice. A rental agreement is an agreement to pay rent indefinitely, but they can still be ended via a valid termination notice. In particular, the relationship between the parties seems to have broken down sometime after 18-October-2023. The landlord says that the tenants moved out because they had acquired a new home. The tenants claim that at some point the behaviour of the landlord's property manager became inappropriate and interfered with their right to peaceful enjoyment and reasonable privacy, and this was what lead to the early termination.
16. The landlord claimed she never received a termination notice, though it was provided as part of her evidence (LL#2 page 54). She objects to the fact that communications were not made directly to her, but instead to her partner and mother. She says that in particular her mother should never have been contacted as she, not her mother, has always been the "real landlord." This stands in contrast to a text from the landlord's property manager (T#42) to the tenants which tells the tenants to leave the landlord alone and go through him or her mother, whom he identifies as the 'landlord' for any communications related to the apartment, as the landlord was pregnant and "doesn't need your nonsense." It also contrasts a text from the landlord dated 7-November-2023 (T#45) at 5:37 pm where she says "I'll send this to mom so she's ready since she's the true landlord."
17. To be valid, a termination notice must comply with all relevant sections of the *Act*, as follows:
  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.

**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.

18. T#41 is in writing in the form prescribed by the minister. It contains the name of the recipient (the landlord's mother, who was identified to the tenants as the "true landlord"). It identifies the residential premises for which the notice is given. It states it is a notice under s. 23(1)(2) of the *Act*. It therefore complies with s. 34.
19. T#41 has been signed by the tenant, albeit digitally. It states the date the tenancy is to terminate. It was served in accordance with s. 35(1)(f) of the *Act*. It therefore complies with s. 23(2).
20. T#41 was served 9-November-2023 and gives a termination date of 15-November-2023. This allows for five clear days in between, which is not less than 5 nor is it more than 14. The only remaining consideration is whether the landlord breached statutory condition 7b set out in s. 10(1) of the *Act*, as follows:

**7. Peaceful Enjoyment and Reasonable Privacy**

- (b) The landlord shall not unreasonably interfere with the tenant's reasonable privacy and peaceful enjoyment of the residential premises, a common area or the property of which they form a part.
21. The tenants allege the property manager interfered with their right to peaceful enjoyment and reasonable privacy. Section 2(c)(ii) of the *Act* defines landlord as including any person who exercises powers and performs duties on behalf of the property owner under the *Act* or the rental agreement. The property manager is therefore included as the landlord for the purposes of the above statutory condition.
22. The tenants allege that the property manager sent harassing voice and text messages to them and their family members. They say many of these messages were deleted

afterwards. They also allege he made posts on public media defaming them. One of the tenants said she became fearful of him and no longer felt safe living at the property. The property manager did not testify. The landlord did not contradict the tenants' testimony. I accept the tenants' testimony.

### **Decision**

23. The landlord's claim for damages succeeds in part. She is awarded \$100 for wall damage and \$18.75 x 5 hours for a total of \$193.75.
24. The landlord's claim for unpaid rent fails.

### **Summary of Decision**

25. The tenants shall pay to the landlord \$193.75 in damages.

31-January-2024

Date



Seren Cahill  
Residential Tenancies Office