

Residential Tenancies Tribunal

Application 2024-0018-NL

Decision 24-0018-00

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 22-February-2024 at 9:00 am.
2. The applicant [REDACTED] appeared via teleconference along with her husband, [REDACTED] their daughter and co-applicant, was unable to attend. Hereinafter the [REDACTED] are collectively referred to as the landlords.
3. The respondent, [REDACTED] hereinafter referred to as the tenant, also attended via teleconference.
4. [REDACTED] and [REDACTED] also attended via teleconference but did not testify.

Issues before the Tribunal

5. Should the landlords' claim for unpaid rent succeed?
6. What is the proper disposition of the security deposit?

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* (the Act).

Issue 1: Unpaid Rent

Landlords' Position

8. The landlords submit that the tenant owes two months' rent (\$1500 total) in lieu of adequate notice. They say the tenant submitted notice of termination on 15-November-2023 and left at the end of the month. As the rental agreement was a fixed term agreement, they submit they are entitled to two months' notice. As they did not receive it and were not able to re-rent the premises until 1-March-2024, they seek rent for the intervening months.

Tenant's Position

9. The tenant submits that her notice was adequate as she was entitled to terminate the lease for cause. She says that she does not owe the landlords any money. She raised as issues, a number of ways in which she alleges the landlords breached the lease agreement.

Analysis

10. The landlord submitted LL#1, the termination notice issued by the tenant. It is in an unusual form, and seems to have been adapted from a discontinuance agreement such as might be used by Residential Tenancies when a landlord and tenant have reached an agreement through mediation. The landlords submitted that this was an attempt to deceive, whereas the tenant testified that she simply misunderstood and used the wrong form. I accept the tenant's testimony that she had no intent to deceive.
11. S. 22(f) of the *Interpretation Act, 1990* reads as follows:

Implied provisions

22. In an Act or regulation

...

(f) where a form is prescribed, deviations from the form not affecting the substance nor calculated to mislead, do not invalidate the form used;

Therefore, the termination notice may still be valid as long as it complies with the rest of the *Act*. However, s. 34 of the *Act* says

Requirements for notices

34. A notice under this Act shall

...

(d) state the section of this Act under which the notice is given.

LL#1 does not state the section of the *Act* under which the notice is given. It is invalid on those grounds. It is unnecessary to consider whether there are valid grounds for a notice for cause.

12. The tenant raised a number of alleged breaches of the rental agreement. In the absence of a valid termination notice, the majority of these alleged breaches are irrelevant to the final determination. There was one exception. The tenant testified that she agreed to the rental agreement on the understanding that she would be sharing the apartment with one other woman (one of the landlords), who she already knew. After the tenancy had begun, she alleges that the landlords unilaterally altered the agreement by adding

another roommate without her knowledge or consent. The landlords did not dispute this and gave their financial reasons for doing so.

13. Was adding another roommate a violation of the lease agreement? This question requires examination of both of the rental agreement and the greater context, potentially including representations made. It should be noted that the landlords testified that they do not typically use written lease agreements and did so at the tenant's request.
14. LL#2 is the written rental agreement. It was drafted by the landlords and addresses the tenant in the second person (e.g., "once you move in"). It is a single page document signed by the landlords and the tenant. There are only four provisions, notably excluding the required statutory conditions under s. 10 of the Act. Term 1 states in its entirety:

1. Term of Lease – September 1, 2023, to August 31, 2024, subject to renewal at the end of the term. (Lease address is [REDACTED]).

The other terms wholly regard the security deposit, rent, and the rental period.

15. The rental agreement is ambiguous as to what, exactly, the tenant is renting. It could be interpreted as a single room in the building and the use of some shared spaces and appliances, or it could be interpreted as the exclusive right to use the entire property, or something in-between. Contractual interpretation is an exercise in ascertaining the objective intent of the parties. In other words, we need to determine what both parties understood the agreement to be. Reading the contract as a whole, while giving meaning to every word used, does not by itself clarify the meaning. We must look at the surrounding context.
16. The tenant directed my attention to some conversations between her and one of the landlords. She provided an apparently comprehensive timeline of the communications leading up to the signing of the rental agreement (T#1, pages 2-11). It is relevant to note that the tenant had an active role in drafting the lease agreement (see for example TB page 17, where the tenant requests to have the lease's term added). This is not a situation where one side offered the other a 'take-it-or-leave-it' contract.
17. Having reviewed the totality of the evidence, including dozens of pages of communications leading up to the signing of the lease agreement, I am prepared to conclude that the lease agreement excluded the possibility of the landlords adding another tenant to the same premises. One piece of evidence pointing to this is in TB page 6, where the tenant explicitly asks the landlord if the two of them will be the only occupants and the landlord responds that there is a downstairs apartment which was being rented separately. On page 7 the tenant asks if the downstairs tenant would be using the same kitchen space and entry door, and the landlord clarifies that they would not. They then clarified "so you will have upstairs to yourself" (as the landlord/resident would not be moving in immediately).
18. The landlord notified the tenant that they would be taking in a second tenant on 30-August-2023, two days before the beginning of the lease's term (see TB page 36). The landlords made two arguments regarding the change in the agreement. Their first argument was that the change was financially necessary given a change of circumstances. While I am not unsympathetic, this is not an effective argument at law. A

person or people who sign a contract are agreeing to follow the obligations included therein, even if it becomes inconvenient to them. It is therefore important to consider one's possible future needs before the agreement is made. I note that this applies equally whether the contract is verbal or written. Secondly, the landlords correctly pointed out that the tenant did not object at this time, effectively arguing that she agreed to modify the lease agreement. The tenant testified that she was, at this time, on the ferry to Newfoundland, a place where she had no family or support, and felt that she had no choice but to respond positively. It may be worth noting that the tenant is a young woman and a student.

19. I must still consider whether the tenant effectively agreed to the change of terms via her words or actions or a combination thereof. In the text messaging conversation where this was discussed, the tenant reacted with a heart emoji to the landlord's messages regarding this new roommate. She thanked the landlord for alerting her. Her tone was generally agreeable. Nonetheless she does not explicitly agree. The closest she comes is saying that she understood and thought "it will all work out." I do not find this to be agreement, given the surrounding context. Rather, I find that the tenant took a positive tone and acquiesced to the change because she felt she had no choice.
20. I have found that the landlords acted in contravention to the *Act*. Normally, the remedy to a breach of this kind would be, at the tenant's discretion, an early termination, or a reduction in rent. In this case, the tenancy has already ended, and the tenant has not applied for a rent reduction. Rather, she submits that she should be entitled to keep the security deposit and the landlord's application for rent in lieu of notice should be denied. This is valued at \$1500.
21. A landlord's ability to recover in lieu of notice is limited by the requirement that they attempt to mitigate their losses by replacing their tenant with a new one. In this case, the landlords rented the property to a new tenant before the current tenant left by adding an additional tenant to the pre-existing agreement. I have already found they were not entitled to do so. They have already therefore effectively successfully mitigated their losses. The time it took to find yet another tenant is therefore irrelevant.
22. For the above reasons the landlord's claim fails.

Decision

23. The landlords' claim for \$1500 in unpaid rent fails.
24. The landlords shall pay to the tenant the \$500 security deposit.

19-March-2024

Date


Serén Cahill
Residential Tenancies Office