

Residential Tenancies Tribunal

Application 2024-0065-NL

Decision 24-0065-00

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 20-March-2024 at 1:49 pm.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as the tenants, attended via teleconference.
3. The respondent, [REDACTED], hereinafter referred to as the landlord, was represented at the hearing by her counsel [REDACTED], who attended via teleconference.

Issues before the Tribunal

4. Is the termination notice dated 6-January-2024 valid?
5. Should the tenants' claim for a refund of rent be granted?
6. Should the tenants' claim for compensation for inconvenience 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*).

Issue 1: Validity

9. The tenants submitted a copy of an email they provided the landlord in which they gave the landlord notice that they intended to terminate the lease, T#5. The validity of this termination notice is in question.
10. Section 34 of the *Act* reads as follows:

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.

11. T#5 does not state the section of the *Act* under which it was given. This is sufficient to render it invalid as a notice of termination.

Issue 2: Refund of Rent

Tenant's Position

12. The tenants seek a refund of \$2554.84 of the amount they paid in rent. This claim can be subdivided into two parts. \$1451.61 is sought for the refund of rent for the days of 12-December-2023 to 5-January-2025, during which time the bathroom of the house was, the tenants say, unusable. The remaining \$1103.23 is claimed for the refund of rent from 13-January-2023 to 31-January-2023, during which time the tenants did not have possession of the unit. They argued that the landlord had agreed to the termination date of 12-January-2024.

Landlord's Position

13. The landlord is opposed to any refund of rent. They submit that they took all reasonable steps to address the issues in the bathroom. They deny that they agreed to a move out date of 12-January-2024 and argue that the landlord was entitled to the full month's rent.

Analysis

14. From 12-December-2023 to 5-January-2024, there was an ongoing issue regarding the premises' single bathroom. In order to effect repairs, the landlord hired contractors who removed part of the exterior of the shower. The tenants testified that this rendered the shower unusable. Counsel for the landlord submitted that his client had offered to provide plastic coverings which would allow the tenants to use the shower. The tenants did not recall this offer and disputed that it occurred. This conversation happened over Facebook messenger, and a copy of the conversation was provided in the form of LL#3. Page 70 of this document shows the offer. The landlord says "I'm just waiting for a response from the contractor. I think it's ok if you use it so long as the exposed part is covered. I can ask my mom to grab some and drop some off to the house tomorrow. Will keep you updated." Presumably, the word "some" refers to plastic covers, but this was not understood by the tenants.

15. In addition to the physical limits of the shower being partially disassembled, the presence of the contractors limited the use the tenants could make of the bathroom.
16. The tenants pointed me to T#5, which shows the email that the tenant offered as a termination notice above and the landlord's response. In this response, the landlord says, "I will not charge you rent for the dates during which the shower was not working." Counsel for the landlord submits that this is a unilateral promise and is therefore not binding. The email begins "Perfect – thanks for confirming a date." The tenants submit that this demonstrates the landlord agreed to the termination date. S. 18(5) of the *Act* allows a tenant and landlord to agree in writing to terminating a tenancy on a specific date without requiring a termination notice.
17. T#1 shows a record of the Facebook messenger conversation between the landlord and one of the tenants. It largely overlaps with LL#3. T#1 page 19 shows a message from the landlord saying "I'm happy to discount the rent for this month to account for the inconvenience caused by the leak/shower issue."
18. The tenants' testimony, which accords with the written conversations provided, was that the contractors were disruptive, particularly in regard to working late hours, once until 12:30 am. This caused the tenant, a medical student, significant consternation.
19. T#11 shows the shower in its state of disrepair. The exterior of the wall on which the shower is mounted has been removed, leaving exposed wood, insulation, and mold. The bathtub tap has been removed. T#12 shows the contractor's equipment left in the premises between visits. It takes up significant hallway space. T#13, T#14, and T#15 show the bathroom at various other stages throughout the repair process. The bathtub is filled with equipment in all three. In one, the toilet has been removed. The tenants testified that the contractors sometimes removed the toilet while working.
20. On 10-January-2024 the landlord provided the tenants with a document titled "termination agreement" (see LL#4 pages 27 and 28). Section 3 of this agreement erroneously says that the *Act* "provides that a fixed-term lease is valid until the end of the fixed rental period unless otherwise agreed upon by the Parties and the Lease Agreement is amended in writing." As noted above, mutual agreement in writing is sufficient to end a fixed term tenancy early. There is no requirement to amend the lease agreement. This termination agreement would amend the rental agreement to end on 31-January-2024 and would refund to the tenants \$1393.55 for the time the bathroom was in disrepair and includes an acknowledgement that this refund is not required under the *Act* or the lease agreement. The tenants rejected this document, and it is relevant to this decision only insofar as it speaks to the landlord's intentions and state of mind and therefore informs their words and actions.
21. I accept the tenants' testimony to the effect that the repair work being done in the bathroom significantly impaired their ability to fully use and enjoy the residential premises from 12-December-2023 to 5-January-2024. For the portions of this time period where the contractors were actively working, they were effectively denied the use of the premises' only bathroom. This is a major amenity and generally considered essential to a living space. For the remainder of the time their use was still impaired in a non-trivial way. The provision of these services was an important part of the rental

agreement. The tenants being deprived of these services constitutes a violation of the rental agreement, notwithstanding the fact that the landlord made a good faith attempt to restore these services as soon as possible. A breach need not be willful.

22. Based on the testimony regarding the impact of the repairs on the tenants, I value the deprivation to be worth half the rent for the relevant time period. The monthly rent in this case was \$1800 a month. The correct formula for determining a daily rate of rent is to multiply the monthly rent by the number of months in a year divided by the number of days in the year. In this case, that formula calculates as follows:

$$\$1800/\text{month} * (12 \text{ months} / 366 \text{ days}) = \sim \$59.02/\text{day}$$

23. 12-December-2023 to 5-January-2024 is 25 days, for a total rent of \$1475.41 for this time period. Applying a reduction of 50% to this gives the appropriate rent reduction as being \$737.70.

24. The second half of the tenant's claim for a refund of rent is based on the tenant's understanding that the lease terminated on 12-January-2024, which was the last day the tenants occupied the property. I find that by the email sent on 6-January-2024, as seen in T#5 and LL#4 page 24, the landlord accepted that the tenant's proposed termination date of 12-January-2024. I am cognizant that the landlord follows her initial response "Perfect – thanks for confirming a date" by discussing other issues relevant to the lease and ends the email by stating that a formal agreement will be drafted and forwarded before the date of the 12th. Nevertheless, I do not see this as a mere agreement to agree. Considered in context, I find that this yet to be drafted document was intended to primarily concern the other issues (e.g., pro-rating rent from 12-December-2023 to 5-January-2024) which arose during the tenancy. I therefore find that the agreement of the termination date is expressed independently of this proposed document. The landlord's words conveyed an intention which the tenants were entitled to rely upon, and I find that they did so.

25. Given the above findings, the tenants are entitled to a complete refund of rent from 13-January-2024 to 31-January-2024, which is 19 days. Applying the daily rate found in paragraph 21 above to 19 days results in a total of \$1121.31.

26. Combining both rent refunds results in a total refund of \$1858.81.

Issue 3: Inconvenience

Tenant's Position

27. The tenants claim for compensation for inconvenience suffered in the total amount of \$932.02. \$377.40 of this claim is based on the allegedly inappropriate behaviour of contractors hired by the landlord. \$200 was claimed for exposure to black mold, which the tenants submit is a dangerous substance. \$100 is claimed for compensation of an alleged entry to the premises without notice. \$100 was claimed for the contractors allegedly endangering the tenants' cat. \$154.62 was claimed for the cost of moving. \$1800 was initially claimed in compensation for one of the bedrooms being rendered allegedly unusable by the landlord storing a mattress in the space for a time period of

several months, but the tenants withdrew this portion of the claim after hearing submissions from counsel for the landlord on the matter.

Landlord's Position

28. Counsel for the landlord denies all claims for compensation of inconvenience. They submit that inappropriate behaviour of the contractors would constitute a private matter between the tenants and the contractors and does not concern the landlord. Notably, some of the incidents referred to by the tenant occurred after the employment relationship between the contractor and the landlord had ended. They submitted that there was no evidence of any actual harm suffered by the tenants in regard to the black mold and the alleged endangerment of the tenants' cat. They denied that an illegal entry to the property occurred and highlighted that the only evidence submitted otherwise was circumstantial. They submit that moving costs would not be appropriate to grant in these circumstances and tenants move was not a result of any breach of the rental agreement by the landlord. Counsel for the landlord submitted that the claims for inconvenience were frivolous and that this was evidence that the tenants were acting in bad faith.

Analysis

29. Circumstances may exist where a landlord is vicariously liable for the acts of contractors they hire to complete repairs. However, and without minimizing the harm that might be done by inappropriate comments made to a tenant by people working within and around their home, I do not find that the allegedly inappropriate behaviour of the contractors constitutes or results from a breach of the rental agreement in the present circumstances. This prevents the tenants from succeeding in this portion of their claim under s.47(1)(h) of the Act. Even had I found otherwise, I agree with counsel for the landlord that liability does not flow through the contractors to the landlord in the present circumstances. The evidence submitted shows that the landlord had limited ability to control the contractors and at least some of the incidents were completely outside the scope of their employment. This portion of the tenants' claim for compensation for inconvenience fails.
30. I agree with counsel for the landlord that without evidence of actual harm, no compensation is warranted regarding both the issue of black mold and the alleged endangerment of the tenants' cat. The role of this tribunal is restorative, not punitive. In other words, this tribunal exists to compensate for actual loss rather than to punish. No evidence was submitted that suggested the tenants were harmed by the presence of black mold, and no evidence was submitted that the tenants' cat suffered anything more than short term discomfort. These portions of the tenants' claim for compensation for inconvenience fail.
31. I am not convinced, on a balance of probabilities, that the landlord or a representative of the landlord illegally entered the apartment without notice. This portion of the tenant's claim for compensation for inconvenience fails.
32. This tribunal grants tenant's compensation for moving fees only under special circumstances. For example, if a tenant is forced to move by the landlord without sufficient notice and this forces the tenants to rely on expensive moving services,

compensation may be warranted. The present circumstances do not justify such compensation. The tenants agreed to move on 12-January-2024, a week after the repairs to the bathroom had been completed. While I understand the tenants' testimony was that other repairs to the property were still required and that they felt it would not be a suitable residence for them while such repairs were being completed, I nevertheless find that the move was driven largely by the breakdown in the tenant-landlord relationship caused by the difficulties of the previous several weeks. While such a breakdown is always unfortunate, it is not compensable. This portion of the tenant's claim for compensation for inconvenience fails.

33. As the tenants abandoned the last portion of their claim near the conclusion of the hearing, I will not address it. The tenants' claim for compensation for inconvenience fails.
34. While I find against the tenants in relation to every portion of their claim for compensation for inconvenience, I do not agree that the claim was made in bad faith. All the tenants' claims were supported by at least some evidence and stemmed from actual grievances. The tenants are self-represented people and I accept that they did their best to limit their claims to what they saw as reasonable. If they chose to err on the side of including claims of which they were unsure, it is not the place of this tribunal to fault them for their legal strategy.
35. I will also briefly address comments made by the tenants in their submissions that they believed the landlord behaved inappropriately and would like me to consider this in rendering my decision. Specifically, they noted that the landlord retained legal counsel, requested that the tenants not contact her directly, and that said counsel made several legal "threats" against the tenants. Firstly, I cannot fault the landlord for hiring legal counsel when facing an actual or potential legal dispute; this is the role legal counsel is meant to play. Secondly, while it may come across to those unfamiliar with the legal process as being rude, lawyers as a rule impress upon their clients to never discuss an ongoing dispute with the other side except through their lawyer. This is an established practice meant to safeguard the legal process and should not be understood as an insult. In reference to the behaviour of legal counsel, I remarked at the hearing to the effect that I saw nothing in legal counsel's behaviour except for zealous representation of his client's interests. I stand by this remark. Nevertheless, for the benefit of the tenants and the public at large, it should be noted that this tribunal has no power over the behaviour of lawyers, and any complaints about same within this province should be directed in writing to the Law Society of Newfoundland and Labrador, the governing body which is mandated to regulate the practice of law and the legal profession in the interest of the public.

Issue 4: Security Deposit

36. The tenants paid to the landlord a security deposit of \$1350. No counterclaim was filed by the landlord regarding any claim against the tenants for moneys owed within the 10 days required by s. 14(11) of the Act. The security deposit must therefore be returned to the tenants.

Decision

37. The termination notice dated 6-January-2024 is invalid.
38. The tenants' claim for a refund of rent succeeds in the amount of \$2596.72.
39. The tenants' claim for compensation for inconvenience fails.

Summary of Decision

40. The landlord shall pay to the tenants \$3208.81 as follows:

Refund of rent.....\$1858.81
Security Deposit.....\$1350.00

Total.....\$3208.81

16-May-2024

Date


Seren Cahill
Residential Tenancies Office