

Residential Tenancies Tribunal

Application 2024-0083-NL
Application 2024-0132-NL

Decision 24-0083-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:10 a.m. on 11-March-2024.
2. The applicants, [REDACTED] and [REDACTED] hereinafter referred to as "the landlords" attended by teleconference.
3. Respondent 1 and counter applicant [REDACTED] hereinafter referred to as "the tenant" attended by teleconference. Respondent 2, and counter applicant, [REDACTED] hereinafter referred to as "the tenant" did not attend.

Preliminary Matters

4. Respondent 2 was not present and I reached him by telephone at the start of the hearing, however he did not wish to attend. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of hearing 10 clear days prior to the hearing date and, where the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as he has been properly served. The landlords submitted 2 affidavits with their application stating that they had served the tenants individually with the notice of hearing via prepaid registered mail [REDACTED] and [REDACTED] on 19-February-2024 (LL#1). Respondent 1 confirmed receipt of the documents. In accordance with the *Residential Tenancies Act, 2018* this is good service. The tenants countered the application and submitted an affidavit stating that they had served the landlords with the notice of hearing via prepaid registered mail on 6-March-2024 (TT#1). In accordance with the *Residential Tenancies Act, 2018* this is not good service; however, the validity of the termination notice will be dealt with under the landlord's application for vacant possession. As respondent 2 was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlords, I proceeded with the hearing in his absence.

5. There is a written term rental agreement which commenced on 8-December-2023. Rent is \$2050.00 per month due on the 8th of each month. A security deposit of \$1,500.00 was paid on 28-November-2023 and is in the landlord's possession.
6. The landlords amended the application to increase rent from \$2,050.00 as per the application to \$4,100.00 to include rent for March, to apply the security deposit against monies owed and to seek hearing expenses.

Issues before the Tribunal

7. The landlords are seeking:
 - An Order for Vacant Possession of the rented premises.
 - Rent paid \$4,100.00
 - Hearing expenses \$20.00
 - Security deposit applied against monies owed \$1,500.00
8. The tenants are seeking:
 - Validity of termination notice

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*.
10. Also, relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 14: Security deposit, Section 20: Notice where material term of agreement contravened.

Issue # 1: Vacant Possession of the Rented Premises Validity of Termination Notice

Relevant Submission:

11. The landlords submitted a termination notice under Section 20: Notice where material term of agreement contravened. The notice is signed and dated for 25-January-2024, with a termination date of 7-March-2024 (LL#2).

Landlord's Position:

12. The landlords testified that the tenants contravened a material term of the rental agreement by bringing pets (3 dogs) onto the premises. The landlords testified that the tenants were fully aware of the *no pet policy* as it was clearly stated in the ad that they had responded to (LL#3) and clearly written in the rental agreement that the tenants signed (LL#4). The landlords gave the tenants a written notice to remove the pets from the unit dated 22-December-2023 and requested to have them removed by 25-December-2023 (LL#5). The landlords stated that the pets were not removed from the premises as per their request and they submitted a photograph dated 5-March-2024 of the dogs in the window of the property to support their claim (LL#6).

Tenant's Position

13. Respondent 1 did not dispute that there are 3 small dogs in the unit and stated that she was unaware that pets were not permitted on the premises. Respondent 1 testified that

the dogs are not there all the time and that they come to stay some of the time. Respondent 1 also testified that the dogs are service dogs.

Analysis

14. Section 20 of the *Residential Tenancies Act, 2018* states:

Notice where material term of agreement contravened

20(2) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes a material term of a rental agreement, the landlord may give the tenant written notice of the contravention, and if the tenant fails to remedy the contravention within a reasonable time after the notice has been served, the landlord may give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises.

(3) Where the landlord gives a tenant notice under subsection (2) that a rental agreement is terminated, the notice shall be given

(b) not less than one month before the end of a rental period where the residential premises is rented for a fixed term.

15. I accept the landlord's testimony that the tenants were fully aware of the *no pet policy* as it was clearly stated in the ad that the tenants responded to when seeking the unit. I asked respondent 1 if she noticed that the ad stated *no pets* and she responded that she was looking at so many ads at the time that she did not notice it. I accept that it is possible to oversee it when looking at numerous ads. With regards to the rental agreement that was signed by all parties on 8-December-2023, part 11 (additional tenant obligations) clearly states that the tenants agree to comply with the obligation of no animals or pets. Respondent 1 stated that she did not see that clause in the rental agreement. I asked the landlords if the rental agreement was discussed with the tenants or if the tenants just signed it and the landlords responded that they went over the entire agreement with the tenants. For this reason, I find that the tenants were fully aware of the *no pet policy*, and as such contravened a material term of the agreement.

16. As for respondent 1's testimony that the dogs are *service dogs*, I am not disputing that they could be service dogs, however it was never mentioned to the landlord at any time that the tenants had service dogs, nor was it put in writing to the *Residential Tenancies Office* when the tenants submitted their evidence. I find that the tenants contravened the rental agreement by bringing 3 dogs onto the premises.

17. The tenant was given the termination notice on 25-January-2024 with a termination date of 7-March-2024, which is not less than 1 month before the end of a rental period after the notice is served. In accordance with Section 20 of the *Residential Tenancies Act, 2018* as stated above, the termination notice meets the requirements of the Act and is a valid notice.

18. I find that the tenant should have vacated the property by 7-March-2024.

Decision

19. The termination notice is a valid notice.

20. The landlord's claim for an order for vacant possession succeeds.

Issue # 2: Rent Paid \$4100.00

Relevant Submission:

21. The landlords testified that rent is outstanding in the amount of \$4100.00 for the period of 8-February to 7-April-2024. The landlords submitted a copy of the rental ledger to support their claim (LL#7). See breakdown of ledger below:

Rental Ledger 2024-0083-NL & 2024-0132-NL			
Date	Action	Amount	Total
February 7, 2024	Balance	\$0.00	
February 8, 2024	Rent due	\$2,050.00	\$2,050.00
March 8, 2024	Rent due	\$2,050.00	\$4,100.00

Landlord's Position

22. The landlords testified that the tenants have not paid rent since January, and they are seeking rent to be paid up to the time the tenants vacate.

Tenant's Position

23. Respondent 1 did not dispute that rent is outstanding for 2 months, however she testified that she withheld the rent from the landlords due to ongoing disputes. Respondent 1 stated that the landlords breached the rental agreement by interfering with their peaceful enjoyment and she testified that the landlords have been harassing her with several electronic messages. Respondent 1 stated that she asked the landlord to give them 90 days to find a place and when that request was denied, she stated that she needed to hold back the rent to secure a new unit.

Analysis

24. Non-payment of rent is a violation of the rental agreement. Rent is required to be paid under a rental agreement by tenants during the use or occupancy of a residential premises. Landlords and tenants have both mediation and adjudication options available to them through the *Residential Tenancies Office* to deal with ongoing tenancy disputes once an application is received and processed. The tenants did submit an application; however, the only issue requested for dispute resolution was *Validity of Termination Notice*. Furthermore, a tenant does not have the right to withhold rent from the landlord unless an *Order* is issued to do so; and in such cases, rent would still have to be paid to the *Residential Tenancies Office* in trust. As mentioned earlier, rent is required to be paid under a rental agreement by tenants during the use or occupancy of a residential premises.

25. The rental ledger is amended to show a daily rate for March as this tribunal does not consider future rent (see below). I find that the tenant is responsible for outstanding rent from 8-February to 11-March in the amount of \$2318.84.

Amended Ledger 2024-0083-NL & 2024-0132-NL			
Date	Action	Amount	Total
February 7, 2024	Balance	\$0.00	\$0.00
February 8, 2024	Rent due	\$2,050.00	\$2,050.00
March 8-11, 2024	Rent due	\$268.84	\$2,318.84

Daily rate: $\$2050 \times 12 \text{ mths} = \24600
 $\$24600 / 366 \text{ days} = \67.21 per day

26. I find that the tenants are responsible for outstanding rent in the amount of \$2,318.84 for the period of 7-February to 11-March-2024.

27. The tenants shall pay a daily rate of \$67.21 until such time as the landlords regain possession of the property.

Decision

28. The landlord's claim for rent succeeds in the amount of \$2,318.84.

Issue # 3: Hearing expenses \$20.00

29. The landlords paid an application fee of \$20.00 to *Residential Tenancies* and provided a copy of the receipt (LL#8).

30. As the landlord's claim has been successful, the tenants shall pay the \$20.00.

Decision

31. The landlord's claim for hearing expenses succeeds in the amount of \$20.00.

Issue # 4: Security deposit applied against monies owed \$1,500.00

Analysis

32. Section 14 of the *Residential Tenancies Act, 2018* states:

Security deposit

14. (8) *A security deposit is not an asset of the landlord but is held by the landlord in trust and may be used, retained or disbursed only as provided in this section.*
- (9) *Not later than 10 days after the tenant vacates the residential premises, the landlord shall return the security deposit to the tenant unless the landlord has a claim for all or part of the security deposit.*
- (10) *Where a landlord believes he or she has a claim for all or part of the security deposit,*
 - (a) *the landlord and tenant may enter into a written agreement on the disposition of the security deposit; or*
 - (b) *the landlord or the tenant may apply to the director under section 42 to determine the disposition of the security deposit.*

(11) *Where a tenant makes an application under paragraph (10)(b), the landlord has 10 days from the date the landlord is served with a copy of the tenant's application to make an application to the director under paragraph (10)(b).*

33. The landlord's claim for losses has been successful as per paragraphs 29 and 32 and as such the security deposit shall be applied against monies owed.

Decision

34. The security deposit shall be applied against monies owed.

Summary of Decision

35. The tenants shall pay the landlords \$838.84 as follows:

Rent	\$2,318.84
Hearing expenses.....	20.00
Less security deposit.....	<u>1,500.00</u>
Total.....	<u>\$838.84</u>

36. The tenants shall pay a daily rate of rent beginning 12-March-2024 of \$67.21, until such time as the landlords regain possession of the property.

37. The tenants shall vacate the property immediately.

38. The tenants shall pay to the landlords any costs charged to the landlords by the Office of the High Sheriff should the landlords be required to have the Sheriff enforce the attached Order of Possession.

39. The landlords will be awarded an Order of Possession.

March 14, 2024

Date


Pamela Pennell
Residential Tenancies Office