

Residential Tenancies Tribunal

Application 2024 No. 219NL

Decision 24-0219-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:45 PM on 23 April 2023 via teleconference.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as "the tenants" participated in the hearing. The respondent, [REDACTED], hereinafter referred to as "the landlord", was also in attendance.

Issues before the Tribunal

3. The tenants are seeking the following:
 - A determination of the validity of a termination notice,
 - An order for a refund of rent in the amount of \$1800.00,
 - An order for a payment of \$7240.00 in compensation for inconvenience,
 - An order for a payment of \$4000.00 in compensation for damages,
 - An order for a payment of utilities in the amount of \$2100.00, and
 - An order for a payment of "other" expenses totalling \$7200.00.

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*. Also relevant and considered in this case are sections 10, 19, 20, 21 and 23 of the *Residential Tenancies Act, 2018*.

Issue 1: Validity of Termination Notices

Relevant Submissions

The Tenants' Position

5. The landlord lives in [REDACTED] and is the owner of a property located at [REDACTED]. In October 2023, that property was in a significant state of disrepair, but the tenants entered into an agreement with the landlord whereby they would carry out the necessary repairs to make it habitable so that they could move into it in December 2023. According to this agreement, the landlord would supply the tenants with the necessary materials for the repairs, and in exchange for the tenants' labour, there would be a reduction in the rent that they would have to pay when the tenancy began.
6. On 20 December 2023, the tenants moved into the unit, and they signed their rental agreement on that date. A copy of the signatory page was submitted with tenants' application. The tenants stated that this agreement was to run for 2 years. Also submitted with the tenants' application was an "Addendum to Rent Payment Agreement" which states:

Because of labour work done by the tenant on house repair work, some deductions will be made on their rent payments. The tenants will make rent payments as per the following schedule:

The schedule states that the tenants will pay \$450.00 for December 2023, \$600.00 per month between January and May 2024, and \$900.00 per month between June and November 2024. Beginning in December 2024, the rent would rise to \$1200.00 for the last year of the 2-year tenancy.

7. On 08 March 2024, the landlord issued the tenants a termination notice and a copy of that notice was submitted by the landlord as part of his evidence package. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* (notice where failure to pay rent), but it did not specify a termination date.
8. On the following day, 09 March 2024, the tenants issued the landlord a termination notice as well, and a copy of that notice was submitted with their application. That notice was issued under 3 different sections of the *Residential Tenancies Act, 2018*: section 20 (breach of material term), section 21 (premises uninhabitable), and section 24 (interference with peaceful enjoyment). This notice had an effective termination date of 20 March 2024, and the tenants moved out on 23 March 2024. The tenants claim that since each party had given the other termination notices at about the same time, the decision to end the tenancy was "mutual".
9. At the hearing, the tenants provided the following 3 reasons as to why they had issued their termination notice to the landlord. First, they claimed that the previous tenant at that property had left behind a significant amount of personal possessions that the landlord had agreed to take to the dump, once the tenants had removed some construction garbage from the house as well. They claimed, though, that the landlord never did make arrangements to have the garbage removed, and it stayed on the premises up to the date they vacated.

10. Secondly, the tenants stated that there were significant deficiencies with the property that they were not qualified to address, even though they had agreed to carry out the required repairs at the property. In particular, they claimed that there was an issue with the electrical panel and a qualified electrician would be needed to carry out the repairs. They also claimed that there was mold in the property which needed to be remediated by a specialist. This work was never carried out by the landlord during their tenancy.
11. Thirdly, the tenants argued that the landlord had deliberately misled them about the condition of the property when they entered into their maintenance agreement in October 2023. In particular, the tenants claimed that the landlord was aware that there was a problem of mold in the unit when they entered into the maintenance agreement with them in October 2023.
12. The tenants are seeking a declaration that the termination notice that they had issued to the landlord on 09 March 2024 is a valid notice.

The Landlord's Position

13. The landlord testified that the reason he had issued the tenants with the first termination notice on 08 March 2024 was because he had not received any rent from the tenants for that month. This was acknowledged by tenants at the hearing.
14. Regarding the tenants' complaints about the garbage, the landlord claimed that he had addressed this already before the tenants moved in. The landlord stated that according to their maintenance agreement, he would either reimburse the tenants for any expenses they had incurred for the purchase of supplies for the house, or he would directly send them money, when requested, for various expenses. The landlord testified that on 05 November 2023 he had sent the tenants \$845.00 for the costs of renting a truck and completing a dump run, and a copy of a text-message exchange was submitted to corroborate that claim. The landlord stated that he had also sent the tenants another \$700.00 on 18 December 2023, at their request, part of which included the costs of paying a "dump fee".
15. Regarding the other complaints, the landlord pointed out that he lived in Ontario and he had hired the tenants to carry out all the necessary repairs on the property. He stated that the tenants had access to the unit for a full 2 months before they decided to enter into their lease agreement and all of his knowledge about the condition of the property was supplied to him by the tenants. He stated that the tenants were his "eyes and ears" when it came to the condition of the property, and, hence, he denied that he had misled them about the condition of the unit.
16. The landlord stated that he had not forced the tenants to enter into the lease agreement with him, and he argued that if the tenant had concerns about the

condition of the unit, they did not have to move in. Instead, though, he claimed that the tenants could not wait to move into the property and on several different occasions during November and December 2023 they had asked him to prepare the lease to sign.

17. With his application, the landlord also submitted a document from [REDACTED] dated 17 April 2024, which states:

After careful examination of the property at [REDACTED], it was determined that there is no mould present on either the main floor, or the basement of the house. All visible areas of discolouration were sprayed, examined, and found to not contain any mould.

Analysis

18. Regarding the termination notice issued by the landlord to the tenants for failure to pay rent, I find that that notice is not valid as it did not specify a date on which the tenancy was to terminate.
19. I also find that the tenants' termination notice is not valid either. Firstly, I was not convinced that the landlord had breached the rental agreement as the landlord's evidence shows that he had already arranged and paid for a truck to remove garbage from the property before the tenants moved in. In any case, the tenants had not issued the landlord a notice of the breach, as required by section 20.(1) of the *Residential Tenancies Act, 2018*, before they had issued the termination notice. Also, where a tenant is terminating a rental agreement for a material breach, the tenant must give the landlord at least 1 month's notice. The termination notice issued by the tenants was an 11-day notice.
20. Regarding the issue of interference with peaceful enjoyment, I was also not persuaded that the tenants were in a position to issue a notice under this section of the Act. The only claim of interference raised by the tenants was that the landlord had deliberately misled them about the condition of the property when they moved in. But I don't accept that claim. I agree with the landlord that the tenants were the landlord's "eyes and ears" with respect to the condition of the property and I also agree with him that they had over 2 months to discover and identify any maintenance issues at the property. No evidence was presented showing that the landlord had misled the tenants, or showing that that they had discovered something about the condition of the unit that the landlord had already known about. And, even the tenants' own evidence shows that they were aware of a mold issue at the unit as early as October 2023. In a document addressed to the landlord, dated 25 October 2023 (Exhibit 5 "State of Location at [REDACTED"]), the tenants outline the scope of work needed at the property, and they write in that document that the insulation in the basement is "full of mold" and that there is a "presence of black mold throughout the house".

21. On the issue of uninhabitability, I agree with the tenants that the unit was not in a good state of repair when they visited it in October 2023. In the document sent to the landlord on 25 October 2023, the tenants state that the following items need to be addressed before someone can move in:

- Insulation in parts of ceiling in Laundry room
- Insulation full of mold to be replaced in basement Knee wall
- Insulation in joist pockets in basement
- Vapour barrier on basement knee wall
- Vapor barrier and concrete at floor- oil contamination
- Air Exchanger while not required for older homes is required when upgrading the building envelope. Although there seems to be non-existent building code requirements in [REDACTED] the National building code is in effect and must be followed for insurance purposes
- There are absolutely no smoke detectors in the house.
- Current regulations in Newfoundland and Labrador require a smoke alarm on each level and in each sleeping area in the home.
- Insulation on hot water pipes is missing and pipes are located in a non-heated basement.
- Basement is not heated.

22. In order to address these items, the landlord hired the tenants to complete this work, and in the text-message exchanges with the landlord in November and December 2023 it is evident that the tenants are addressing the bulk of these items and that landlord is supplying the tenants with the required materials or compensating them for purchases they had made. This repair work includes the removal and cleaning of mold and addressing the electrical issues. On 02 December 2023 the tenants inform the landlord that they had an electrician visit the unit and they were advised that the electrical panel was safe and in other text-messages the tenants write that they had removed and replaced moldy insulation and installed vapor barriers and that they had carried out some electrical repairs themselves.

23. When the tenants moved in on 20 December 2023 and signed the rental agreement, there is no evidence to suggest that the unit was uninhabitable on that date or that there were any concerns about the electricity or about mold. I was also not persuaded that there were any electrical issues or mold issues at the unit when the tenants issued the termination notice on 09 March 2024, and that conclusion is supported by the assessment the landlord had completed by [REDACTED].

Decision

24. The termination notice issued to the tenants on 08 March 2024 is not a valid notice.

25. The termination notice issued to the landlord on 09 March 2024 is not a valid notice.

Issue 2: Compensation for Damages - \$4000.00

Relevant Submissions

The Tenants' Position

26. Because the tenancy ended in March 2024, the tenants claimed that they suffered financial damages, and they are seeking compensation as follows:

• Difference in rent costs	\$2700.00
• Moving expenses	\$900.00
• Lost wages and opportunities	TBD
• Time spent closing agreement	\$400.00
Total	<u>\$4000.00</u>

Difference in rent costs

27. The tenants stated that after they moved out, they had to rent an apartment from a friend in [REDACTED], and they are now paying \$1100.00 per month in rent. They pointed out that this is a \$500.00 monthly difference in what they had agreed to pay the landlord for the period from March through May 2024, a total of \$1500.00, and a \$200.00 monthly difference for what they had agreed for the period from June to December 2024, a total of \$1200.00. The tenants argued that as the landlord knew that there was a mold issue at the property, and as he had withheld that knowledge from them, he is responsible for reimbursing them for the extra rent they will have to pay through to December 2024, a total of \$2700.00.

Moving expenses

28. The tenants also claimed that they had incurred \$900.00 in moving expenses to move from the rental unit in [REDACTED] to their apartment in [REDACTED]. The tenants stated that they were required to purchase gasoline for the move and they also had to repair a ceiling at the rental unit. No receipts were submitted with their application.

Lost wages and opportunities

29. The tenants stated that they had an opportunity to carry out some work for another person, and they would have been paid \$16,000.00 for that work. Instead, the tenants were spending all of their time carrying out work and repairs on the rental property and they therefore lost those potential wages.

Time spent closing agreement

30. The tenants argued that they are entitled to \$400.00 from the landlord for the following items. They claimed that they had wasted a significant amount of time arguing with the landlord and that stated that every time the landlord has a problem, he blames someone else. They are also seeking compensation for the time they had spent “preparing everything”, including this claim. Additionally, the tenants are seeking compensation for their time in cleaning up the rental unit before they vacated in March 2024, and they claimed that the property was in a much better condition when they vacated than when they moved in.

The Landlord’s Position

Difference in rent costs

31. The landlord stated that in February 2024 the tenants informed him that they had purchased a vacant home in [REDACTED] and they would be moving into that property in 1 month’s time. The landlord argued that the tenants cannot both be paying rent at a new apartment while they are living in their new home. He also argued that the tenants ought to have submitted into evidence a rental agreement showing that they are paying this monthly rent.

Moving expenses

32. The landlord pointed out that the tenants submitted no receipts with their application showing that they had incurred any moving expenses, and he accused the tenants of “making numbers up”.

Lost wages and time spent closing agreement

33. The landlord made no comments on this portion of the tenants’ claim except to say that he did not know what they were talking about.

Analysis

34. As indicated in the previous section, the tenants and the landlord had entered into an agreement whereby the tenants would carry out the necessary repairs at the rental property in exchange for a reduction in rent, as per the “Addendum to Rent Payment Agreement”. This reduction in rent was compensation for the tenants’ labour and the landlord agreed to purchase the necessary materials for the repairs.
35. In October 2023, as evidenced by Exhibit 5 “State of Location at [REDACTED] [REDACTED]”, the tenants were wholly aware that the unit was in a significant state of disrepair, and that there were mold issues at the unit and that there were problems with the electricity, as well as numerous other problems. This is also made evident in the text-message exchanges the tenants and the landlord exchanged in October and November 2023.

36. No evidence was presented at the hearing to convince me that these issues, or any others, were concealed from the tenants by the landlord and there was no evidence presented to establish that the tenants had not entered into this agreement willingly. Accordingly, I find that the landlord had not breached their agreement and is not responsible for their contractual relationship ending. For these reasons, I find that the costs the tenants are seeking do not succeed.

Decision

37. The tenants' claim for compensation for damages does not succeed.

Issue 3: Compensation for Inconvenience - \$7240.00

Relevant Submissions

The Tenants' Position

38. In addition to the claim for compensation for damages dealt with in the previous section, the tenants are also seeking compensation for inconvenience, as follows:

• Clean up of property.....	\$800.00
• Time and gas for trips from Gander	\$840.00
• Evaluation of damages.....	\$2640.00
• Miscellaneous errands	\$460.00
• Mold cleaning.....	\$2500.00
Total.....	<u>\$7240.00</u>

Clean up of property

39. The tenants stated that there was a significant amount of garbage left at the property when they first visited it in October 2023, and it all had to be moved and disposed of before they could assess the property to determine what repairs needed to be carried out. The tenants stated that they had an agreement that they would not charge the landlord for their labour in carrying out this work in exchange for being allowed to move into the rental property in December 2023. They stated that the landlord had sent them \$800.00 for the costs of renting a truck, and they had returned about half of that to him as the rental was not that expensive. Although they had agreed not to charge the landlord for the cost of removing the garbage, they are now making this claim because the landlord served them with an eviction notice and because he had lied to them about the condition of the house.

Time and gas trips from Gander

40. The tenants stated that between October and December 2023 they made about 25 trips between [REDACTED] and [REDACTED] to carry out repairs at the rental unit. The tenants claimed that for each trip they had spent \$27.00 in gasoline, and they calculated that the landlord owes them \$800.00.

Evaluation of damages

41. According to the tenants' breakdown, they spent 48 hours evaluating the property to determine what repairs were needed at the rental unit. They are seeking \$55.00 for each hour of their labour for a total claim of \$2640.00. The tenants acknowledged that there was no agreement that the landlord would pay them for that work, but that instead they would be permitted to rent the unit for a period of 2 years at a reduced rent. They argued that because the landlord had breached his agreement and had lied to them, they should now be compensated for this evaluation.

Miscellaneous errands

42. The tenants stated that they had also replaced a hot water tank at the rental unit and another tank at another one of the landlord's properties. The tenants stated that they did this work "out of the kindness of their heart", that they "did it for nothing" and that they "did it without ever charging him anything". However, the tenants argued that as the landlord had manipulated them and as he had attempted to change their rental agreement, they believe that they should now be remunerated for their work.

Mold cleaning

43. The tenants stated that they had spent about 3 weeks scraping and removing mold at the property, and then treating the surfaces where it was found. They complained that as they removed walls in the unit, more mold was found each time. The tenants are seeking \$2500.00 in compensation for their labour.

The Landlord's Position

Clean up of property

44. The landlord reiterated the tenants' claim that there was an agreement in place where the tenants would carry out the repairs and cleaning at the property in exchange for a reduction in rent when they moved in. He pointed out that he had sent them money on several occasions for the costs of a truck rental and for dumping fees.

Time and gas trips from [REDACTED]

45. The landlord stated that there never was an agreement that he would compensate the tenants for the gasoline they consumed travelling from [REDACTED] to [REDACTED]. He testified that while the tenants were carrying out repairs at the property, he paid for all the purchased supplies and whenever the tenants contacted him looking for money for any expenses they had incurred, he would immediately reimburse them with an e-Transfer. The landlord stated that the tenants had never asked for money for gasoline during this period.

Evaluation of damages

46. The landlord reiterated the tenants' claim that there was no agreement that he would compensate them for evaluating the property to determine what repairs were required, but rather they would receive a reduced rent when they moved into the unit.

Miscellaneous errands

47. The landlord again pointed out that the tenants would be compensated for their work at the rental unit with a reduction of rent during the first year of the lease agreement. With respect to the replacement of the hot water tank at another of the landlord's properties, he pointed out that he had entered into a separate property management agreement with the tenant and through that agreement he was compensated for this additional work.

Mold cleaning

48. The landlord stated that as part of their agreement, the tenants would remove and clean the mold at the property in exchange for a reduced rate of rent. The landlord also questioned why the tenants were complaining about mold in March 2024 when they had already removed it in October and November 2023 before they moved in.

Analysis

49. For the same reasons I gave in the previous section, I also find that this portion of the tenants' claim does not succeed. The tenants were fully aware of the condition of the property in October 2023 before they agreed to carry out the repairs, and they were aware of the condition of the property when they moved in in December 2023. In compensation for their labour, the landlord and tenant agreed that the rent would be reduced during the first year of the tenancy. No evidence was presented at the hearing to convince me that the landlord had misled the tenants or that he had violated their lease agreement.

Decision

50. The tenants' claim for compensation for inconvenience does not succeed.

Issue 4: “Other” Expenses - \$7200.00

Relevant Submissions

The Tenants’ Position

51. The tenants stated that before they moved into rental unit in December 2023, they had spent 30 days carrying out repairs. They are seeking \$7200.00 in compensation for their labour, calculated at \$240.00 per day.

The Landlord’s Position

52. The landlord stated that the agreement he had entered into with the tenants was that they would receive a reduction in rent in exchange for the labour they exerted in repairing the rental unit before they moved in.

Analysis

53. I again find that the tenants’ claim does not succeed. The addendum submitted with the tenants’ application states that their labour would be compensated by a reduction in rent.

Decision

54. The tenant’s claim for “other” expenses does not succeed.

Issue 5: Refund of Rent - \$1800.00

Relevant Submissions

The Tenants’ Position

55. In addition to the claim made in section 2 for \$2700.00 for the difference in rent the tenants are currently paying compared to what they would have paid to the landlord had they not terminated their agreement, the tenants are also seeking a refund of all the rent they had paid to the landlord for the duration of their tenancy.
56. The tenants argued that they are entitled to this rebate as the landlord had lied to them about the mold that they found at the rental property. They stated that the landlord was aware of the mold issue at the property in October 2023 and he should have informed them before they entered the unit so that they could have avoided being exposed to it.

57. The tenants stated that mold was discovered both in the upstairs portion of the house and in the basement. They stated that they had the mold from upstairs tested by a friend, and it was determined that it was regular household mold and was not dangerous. Regarding the mold in the basement, the tenants figured that this mold was the result of the previous tenant growing marihuana. The tenants stated that they sealed off the basement from the upstairs portion of the house, ensuring that it was safe for them to reside there.
58. Because the landlord had lied to the tenants about the mold, they argued that their lease agreement is not legally binding and they are therefore entitled to a refund of all the rent that they had paid to the landlord, a total of \$1800.00.

The Landlord's Position

59. The landlord pointed out that the tenants did a thorough inspection of the house in October 2023, before they began the repairs, and they were in a better position to know the condition of the house than the landlord was. He claimed that they were aware of the mold at that time, and as part of the work they had agreed to undertake was to remove that mold and make the unit habitable for them to move into in December 2023.

Analysis

60. The text messages submitted by the tenants show that they were aware of mold issues at the property as early as 14 October 2023. In the exchange they had on that date, the landlord writes that he wishes to update the tenants on the condition of the rental property and he supplies them with photographs on that date. On that same day, the tenant informs the landlord that there is black mold in the basement.
61. On 25 October 2023, after entering the unit and inspecting it, the tenants write in the document, "State of location of [REDACTED]" that the insulation in the basement is "full of mold" and that there is a "presence of black mold throughout the house".
62. After that inspection on 25 October 2023, the tenants agree to carry out the required repairs at the property, including the remediation of mold, and they also agree to the move into the unit in December 2023 after the work is completed and the unit is made habitable.
63. Nothing in these exchanges suggests that the landlord had withheld any information about the condition of the property or that he was concealing from the tenants any information about the property that the tenants could not have determined for themselves. I conclude, therefore, that the tenants have failed to establish that the landlord had lied to them or that he had breached their rental agreement. As such, this portion of their claim does not succeed.

Decision

64. The tenants' claim for a refund of rent does not succeed.

Issue 5: Utilities - \$2100.00

Relevant Submissions

The Tenants' Position

65. The tenants claimed that during the time they resided at the rental unit they had to consume more electricity to heat the unit than they otherwise would have because the baseboard heaters in the unit were inadequate.
66. They claimed that there were no heaters in the kitchen or the bathroom, that there was only 1 heater in the living room, and the heater in the bedroom was too small. As such, the tenants claimed that the heaters had to run for longer periods to adequately heat the unit, and they were therefore charged more for electricity.
67. With their application, the tenants submitted 2 Newfoundland Power bills showing that they were charged \$707.92 for the period from 18 December 2023 to 22 January 2024, and another \$697.66 for the period from 22 January to 22 February 2024, a total of \$1405.58. They estimate that when they collect their bill for March 2024, the total amount charged during their tenancy would come to \$2100.00. The tenants argue that as the heaters at the unit were inadequate, the landlord should reimburse them for all of these charges.

The Landlord's Position

68. The landlord pointed out that according to their rental agreement, the tenants were responsible for paying for their own utilities.
69. With respect to the adequacy of the heaters, the landlord stated that he had an agreement with the tenants that they would carry out the necessary repairs to the property before they moved in. He testified that whenever they needed supplies or money for any purchases they had made, he always promptly responded and repaid any expenses that the tenants had incurred. He argued that if the unit need new or more heaters, this was something they should have addressed when carrying out the repairs.

Analysis

70. I find that this portion of the tenants' claim also does not succeed.
71. It was not disputed that according to the terms of the rental agreement, the tenants were responsible for paying for their own electrical utilities. The tenants

were aware of the heating capacity of the rental property before they moved in, and they were in a particularly unique position on this issue as they had been carrying out repairs on the property in the months leading up to the commencement of this tenancy. If the tenants did not want to pay for the electrical utilities, or if they wanted to have the landlord share the costs of the electrical utilities, they should have negotiated this at the time they signed the lease.

72. Furthermore, no evidence was presented to establish that the tenants had requested more or better baseboard heaters during their tenancy, and no testimony was provided at the hearing indicating that the tenants had issued the landlord a formal request for repairs.
73. Finally, no evidence was presented at the hearing showing whether, or by how much, the tenants' electricity consumption would have been reduced had they been provided with more or better heaters. In any case, it would not follow that the landlord would be responsible for paying for all of the tenants' electrical charges.

Decision

74. The tenants' claim for a payment of utilities does not succeed.

15 May 2024

Date

John R. Cook
Residential Tenancies Tribunal