

Residential Tenancies Tribunal

Application 2024-0269-NL & 2024-0273-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 18-June-2024 at approximately 11:00 am.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as the tenants, appeared via teleconference.
3. The respondent, [REDACTED], hereinafter referred to as the landlord, was represented at the hearing by director [REDACTED], who also appeared via teleconference.

Preliminary Matters

4. The hearing was first scheduled on 6-June-2024. All parties attended at that time and agreed to reconvene at the above date and time. A notice of rescheduled hearing was served on both parties.
5. The landlord originally sought unpaid rent in the amount of \$3700. However, at the time of the hearing, the landlord asked to amend the claim to \$1850 to account for the landlord's successful mitigation of lost rent by finding a new tenant.

Issues before the Tribunal

6. Is the termination notice dated 23-February-2024 valid?
7. Should the landlord's claim for unpaid rent be granted?
8. Should the landlord's claim for damages be granted?
9. Should the tenant's claim for compensation for inconvenience succeed?
10. What is the proper disposition of the security deposit?

Legislation and Policy

11. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).
12. Also discussed and referred to in this decision are sections 23 and 34 of the *Act*, reproduced here:

Notice where landlord contravenes peaceful enjoyment and reasonable privacy

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.

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.

Issue 1: Validity

Landlord's Position

13. The landlord submitted a copy of a termination notice (LL#1) they received from the tenants on 23-February-2024. It is a notice for termination based on interference with peaceful enjoyment. They argue the notice is contrary to the *Act* and is invalid both on the basis that it does not comply with sections 23(2) and 34 and on the basis that there was no interference with the tenant's peaceful enjoyment.

Tenants' Position

14. The tenants agree that they submitted this notice. They argue that the landlord interfered with their right to peaceful enjoyment and reasonable privacy.

Analysis

15. To be valid, a termination notice must comply with all relevant sections of the *Act*. LL#1 is in writing but is not in the form prescribed by the minister, contrary to s. 34(a) of the *Act*, as above. However, according to s. 22(f) of the *Interpretation Act*, RSNL1990, where a form is prescribed, deviations from the form not affecting the substance nor calculated to mislead do not invalidate the form used. Therefore, LL#1 not being in the form prescribed by the minister does not necessarily invalidate it.
16. LL#1 does not contain the address of the recipient, which was provided in the lease agreement. This is sufficient to render it invalid under s. 34(b) of the *Act*. It is also not signed by the tenant, which is sufficient to render it invalid under s.23(2)(a).
17. LL#1 is not a valid termination notice.

Issue 2: Unpaid Rent

Landlord's Position

18. The landlord seeks rent in lieu of proper notice in the amount of \$1850, which is the full monthly rent for the month of March. The landlord said that the tenants vacated on 29-February-2024 and only notified them of this on 23-February-2024. They testified that they were not able to find a new tenant before April.

Tenants' Position

19. The tenants maintained that the notice for 29-February-2024 was valid, and that they therefore are not liable for rent beyond that date.

Analysis

20. As discussed in Issue 1 above, the termination notice was not valid. S. 18(1)(c) of the *Act* mandates that in a fixed term rental agreement such as the one at issue, a tenant shall give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises not less than 2 months before the end of the term.
21. In the absence of a valid notice, the tenants are liable for the loss of rent for the month of March. The landlord's claim for unpaid rent succeeds in the amount of \$1850.

Issue 3: Damages

22. The landlord seeks \$4483.61 in damages divided amongst 14 items. Each item will be discussed separately below. For each item, the landlord must establish on a balance of probabilities that the tenant caused the damage through a wilful or negligent act, and the cost of replacing or repairing the damage. In accordance with Residential Tenancies

Program Policy and Procedure Guide Policy 09-003, the landlord must provide some form of documentary evidence establishing the damage and the cost of replacement or repair must be established with receipts, invoices, or quotes where appropriate.

23. The first item is a set of frying pans valued at \$34.49. The landlord testified that the item was missing when they retook possession of the premises. Naturally, direct evidence of the damage is not an appropriate requirement when an item is missing. A receipt was listed in the landlord's damages ledger but could not be found. Schedule A of the lease agreement lists this item as part of the furnishings provided to the tenant.
24. The tenants agree that they disposed of the frying pans. They testified that the pans were rusting and unusable.
25. The tenant testified that they disposed of an item of the landlord's without notifying the landlord ahead of time. They testify that the item was unusable. The landlord is not in a position to provide evidence that could refute this because the item is gone through the tenant's actions. The tenant could have taken a photograph of the item before they disposed of it. If they thought to do so, no such evidence was provided.
26. Considering the totality of the evidence on a balance of probabilities, I find that the item was damaged or destroyed by the tenant's wilful or negligent act. However, the Residential Tenancies Program Policy and Procedure Guide procedure policy 09-003 states that a landlord claiming damages shall provide sufficient evidence to establish the cost of repair or replacement. In the absence of a receipt, this portion of the landlord's claim fails.
27. The second item is a tablecloth valued at \$28.74. Again, the landlord testified that the item was missing. A receipt was provided (LL#18). Schedule A of the lease agreement lists this item as part of the furnishings provided to the tenant.
28. The tenants testify they have no knowledge of this item.
29. Considering the totality of the evidence on a balance of probabilities, I find that the item was damaged or destroyed by the tenant's wilful or negligent act. This portion of the landlord's claim succeeds in the amount of \$28.74.
30. The third item was a soap dispenser valued at \$8.05. Again, the landlord testified that the item was missing. A receipt was provided (LL#18). Schedule A of the lease agreement lists this item as part of the furnishings provided to the tenant.
31. The tenants agreed that they disposed of the item. They say it was in poor condition.
32. Considering the totality of the evidence on a balance of probabilities, I find that the item was damaged or destroyed by the tenant's wilful or negligent act. This portion of the landlord's claim succeeds in the amount of \$8.05.
33. The fourth item was a set of window sheers valued at \$57.49. They say it was ripped and no longer usable. A photo was provided (LL Exhibit W). A receipt was provided (LL#18).

34. The tenants testified that the sheers had a small tear in them when they moved in, and it worsened over time.
35. Considering the totality of the evidence on a balance of probabilities, I find that the item was damaged or destroyed by the tenant's wilful or negligent act. This portion of the landlord's claim succeeds in the amount of \$57.49.
36. The fifth item was a pair of oven mitts valued at \$19.54. The landlord submits that they were missing. A receipt was provided (LL#18). Schedule A of the lease agreement lists this item as part of the furnishings provided to the tenant.
37. The tenants' evidence was insufficient to refute the landlord's claim. Considering the totality of the evidence on a balance of probabilities, I find that the item was damaged or destroyed by the tenant's wilful or negligent act. This portion of the landlord's claim succeeds in the amount of \$19.54.
38. The sixth item was a set of utensils valued at \$14.94. The landlord submits that they were missing. A receipt was provided (LL#18). Schedule A of the lease agreement lists this item as part of the furnishings provided to the tenant.
39. The tenants' evidence was insufficient to refute the landlord's claim. Considering the totality of the evidence on a balance of probabilities, I find that the item was damaged or destroyed by the tenant's wilful or negligent act. This portion of the landlord's claim succeeds in the amount of \$14.94.
40. The seventh item was a set containing a duvet cover valued at \$60.95. The landlord says that the duvet cover had a hole burned into it. A picture was provided (LL Exhibit DD) showing the burn hole.
41. The tenants' evidence was insufficient to refute the landlord's claim. Considering the totality of the evidence on a balance of probabilities, I find that the item was damaged or destroyed by the tenant's wilful or negligent act. This portion of the landlord's claim succeeds in the amount of \$60.95.
42. The eighth item was a set of baking sheets valued at \$28.74. The landlord submits that they were missing. A receipt was provided (LL#18). Schedule A of the lease agreement lists this item as part of the furnishings provided to the tenant.
43. The tenants' evidence was insufficient to refute the landlord's claim. Considering the totality of the evidence on a balance of probabilities, I find that the item was damaged or destroyed by the tenant's wilful or negligent act. This portion of the landlord's claim succeeds in the amount of \$28.74.
44. The ninth item was for the cost of re-keying the lock, valued at \$13.83. A receipt was provided (LL#17). The landlord testified that the tenants failed to return the keys provided. The tenants testified that they offered to return the keys but the landlord did not respond. The landlord responded that the tenants knew the address at which to reach them.

45. According to policy 02-004, a landlord cannot charge the tenant for the replacement of locks unless the locks were damaged by the tenant or guests of the tenant. Replacing locks is considered a cost of doing business for a landlord. When a rental agreement is terminated and another tenant is taking occupancy of the unit, the landlord is expected to change locks for the security of the new tenant. Re-keying the locks is part of the cost of doing business and is not compensable. This portion of the landlord's claim fails.
46. The tenth item was the cost of cabinet and furniture cleaner. I will address this item with items thirteen and fourteen, below.
47. The eleventh item was a set of damaged lamps valued at \$172.49. A receipt was provided (LL#19). Photos of the damage were provided (LL Exhibits U, V, and X). The floor lamp shown is bent. The table lamp shown has a shattered glass fixture.
48. The tenants testified that the lamps remained functional despite the damage.
49. The tenants were responsible to ensure the furnishings remained in good condition, excepting normal wear and tear. The damage shown goes beyond normal wear and tear. Considering the totality of the evidence on a balance of probabilities, I find that the item was damaged or destroyed by the tenant's wilful or negligent act. This portion of the landlord's claim succeeds in the amount of \$172.49.
50. The twelfth item is for the cost of repairing bathroom cabinet doors, valued at \$414.00. An invoice was provided (LL#20). Photos of the damage were also provided (LL Exhibits 1-4). The landlord suggested the damage shown looks like water damage, caused by the tenants negligent act or acts.
51. The tenants pointed to the Tenant's Exhibits H3 and H4, which show the state of the premises before occupancy. Close review shows that some of the damage shown in LL Exhibits 1-4 was already present. The landlord agrees that some damage preceded the tenancy but that the damage added is significant and compensable.
52. Considering the evidence in its totality, I do not find on a balance of probabilities that the worsened condition of the cabinets exceeds what would be considered wear and tear. This portion of the landlord's claim fails.
53. Items thirteen and fourteen are the labour and materials required to complete repairs valued at \$3289.00 and \$317.22, respectively. Invoices were provided from a private contractor hired by the landlord (LL#21 and LL#22). The labour invoice is for 68 hours of labour doing repair/maintenance work at a rate of \$35/hour and 16 hours of cleaning at \$30/hour (both before HST). I note that both invoices specify that they were for the remedy of problems caused by the tenants, though it is not clear how this conclusion was drawn.
54. The landlord testified that the apartment was left in a very dirty state requiring a deep cleaning. They added that the tenants vaped and/or smoked in the premises in violation of the lease, causing a buildup of residue to the extent that one's feet stuck to the floor. They said that the cabinet door over the bathtub was pulled off the hinge. They say there was significant mold on the ceiling and the bathroom wall because one or both of the tenants refused to use the bathroom fan while showering. They say excessive water in

the bathroom damaged several ceiling tiles in the room below. They say a kitchen cabinet was damaged by steam from a kettle. They also testified that one of the tenants attached items to the wall of their bedroom with nails in violation of the lease, requiring paint and plaster. Various photos provided show the damage (LL Exhibits 7-12, 14-15, A-H, J-T, Z, and EE). The landlord conceded that the tenants did some cleaning, particularly in regard to the mold, but submits that the results were insufficient.

55. The landlord also claims \$24.14 for cleaning supplies for the cabinet and furniture. The landlord testified that they attempted to use these supplies to repair the damage before hiring the more expensive contractor, mitigating costs, but that this attempt failed.
56. The tenants testified that the apartment was not left in a "very dirty state," and submit this is an unfair characterization of the evidence. They provided a video (Tenant Exhibit F3) from 9-February-2024, shortly after the landlord had visited the apartment and described it as "filthy," showing the state of the premises in what they submit to be a clean state. The tenants moved out on 29-February-2024. The landlord argued that this video had no evidentiary value, and I agree. I must determine, based on the evidence before me, whether the premises were left in an unclean state. The state of the apartment previous to this date and how the parties characterize that state are irrelevant. My finding will be based upon the parties' testimony of objective facts as well as documentary evidence of same.
57. The tenants also provided photos and videos of the state of the premises as they left it (J1-J4, J9-J12). They also testified that they hired a cleaning service, and provided receipts of same (J7, J8). The tenants acknowledged fault and responsibility for some of the damages listed in the invoice, particularly the steam damage from the kettle and the nails used in the bedroom. They deny that they failed to use the bathroom fan or were otherwise at fault for any excessive moisture in the premises.
58. None of the evidence presented of the states of the premises on move out was in contradiction which other evidence presented. I therefore accept that most of the premises were left in a largely clean state. However, the landlord's evidence nevertheless shows that parts of the premises still needed to be cleaned after the tenants vacated. Therefore, I must consider whether the evidence presented by the landlord justifies 16 person hours spent cleaning. After careful consideration of the evidence in its totality, I conclude on a balance of probabilities that it does.
59. Considering all the evidence in its totality, I find on a balance of probabilities that the damages listed by the landlord were caused by the wilful or negligent actions of the tenants. I also find that the costs to repair the damage has been established, with one exception. The second item listed on the labour invoice is for 24 person hours to restore the secondary bedroom, including "painting of walls from picture holes, position all furniture back to original and refinishing damaged nightstand." With respect to the landlord and the contractor, I cannot accept that this work took 24 person hours to complete. I note that the invoice uses the word "included" and understand that additional work may also have been done, but no other evidence of damage in the bedroom was presented that would explain this discrepancy. I substitute 10 hours as a more reasonable number.

60. The landlord's claim for materials succeeds in the amount of \$317.22. The landlord's claim for labour succeeds in the amount of \$2725.50.
61. In respect to the \$24.14 claimed for cleaning supplies in relation to the above, I accept that these supplies were purchased as a good faith effort on part of the landlord to mitigate costs, notwithstanding the fact that it was unsuccessful. I have already accepted that the tenants are responsible for the damage. The cost is shown in LL#23. Therefore, this portion of the landlord's claim succeeds in the amount of \$24.14.
62. In total, the landlord's claim for damages succeeds in the amount of \$3457.80.

Issue 4: Tenants' Claim for Compensation for Inconvenience

Tenants' Position

63. The tenants seek compensation for inconvenience suffered as a result of the landlord's alleged violation of the rental agreement or the *Act*. In particular, they submit that the landlord interfered with their right to peacefully enjoy the property. They say the landlord did this through aggressive communications, controlling behaviour, and entering the premises inappropriately. They provided a number of text messages between the parties (Tenant's Exhibits A1-A16, C1-C11 and E1-E14). They highlight that the landlord entered the premises 14 times in 10 months.

Landlord's Position

64. The landlord denies violating the rental agreement or the *Act*. They maintain that their communications were appropriate, their behaviour was reasonable, and their entries were both legal and for a valid purpose, many times for repairs.

Decision

65. Having reviewed all submitted communications between the parties, I am unable to locate anything that amounts to a breach of the rental agreement or the *Act*. The landlord never uses language that is abusive, insulting, or degrading. I would describe the tone as being, at times, confrontational, but it remains professional throughout. They do insist that the tenants comply with the rental agreement to the letter, but they are legally within their rights to do so. For instance, it is not a violation of the rental agreement or the *Act* to threaten to evict a tenant if they do not comply with a material term of the rental agreement.
66. There was no suggestion that the landlord ever entered the premises without 24 hours notice.
67. The tenants take issue with the number of times the landlord enters to inspect the premises. The landlord responds that they did increase the regularity of inspections after noticing a problem with the level of the cleanliness of the apartment, and that once the issue was remedied these inspections returned to a normal schedule.
68. I remain open to the possibility that entering for an inspection with 24 hours notice could be a violation of the rental agreement or *Act* (notwithstanding the fact that the landlord is

explicitly authorized to make such entry by the Act) where it can be demonstrated that the inspections are not being done in good faith or rise to a level which is unreasonable, but I do not find sufficient evidence to establish that this is such a case.

Issue 5: Security Deposit

69. As the landlord is owed moneys, they are entitled to apply the security deposit against the sum owed. The security deposit in this case was \$1300. As per s. 14(7) of the Act, a landlord shall credit interest to the tenant on the full amount or value of the security deposit, at the rate prescribed by the regulations, during the time the security deposit is held by the landlord. The regulations stipulate an interest rate of 0% for the year 2023 and 1% simple cumulative annual interest for the year of 2024. Calculated to the date of the hearing this results in total interest of \$6.07, for a total of \$1306.07.

Decision

70. The termination notice dated 23-February-2024 is invalid.
71. The landlord's claim for unpaid rent succeeds in the amount of \$1850.
72. The landlord's claim for damages succeeds in the amount of \$3471.63.
73. The tenant's claim for compensation for inconvenience fails.
74. The landlord may apply the security deposit and interest, totaled at \$1306.07, to the total owed.
75. As the landlord was successful in their application, they are entitled to have their reasonable hearing expenses covered. In this case, their expenses consisted solely of the \$20 application fee.

Summary of Decision

76. The termination notice dated 23-February-2024 is invalid.
77. The tenants shall pay to the landlord \$4021.73 as follows:

Unpaid Rent.....	\$1850.00
Damages.....	\$3457.80
Hearing expenses.....	\$20.00
Less Security Deposit.....	-\$1306.07
Total.....	\$4021.73

31-July-2024

Date


Seren Cahill
Residential Tenancies Office