

Residential Tenancies Tribunal

Application # 2024-0308-NL & 2024-0409-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 13-Jun-2024 at 9:02 am.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as the tenants, attended via teleconference.
3. The respondent [REDACTED] appeared via teleconference on behalf of himself and his co-respondent [REDACTED]. The [REDACTED] are hereinafter referred to as the landlords.

Preliminary Matters

4. Both parties acknowledged that they were served with notice of the other party's claim.

Issues before the Tribunal

5. Is the termination notice dated 24-March-2024 valid?
6. Should the landlords' claim for damages be granted?
7. Should the landlords' claim for unpaid rent and late fees be granted?
8. Should the tenants' claim for a refund of rent be granted?
9. What is the proper disposition of the security deposit?

Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).
11. Also considered and referenced in this decision are sections 21 and 34 of the *Act*, reproduced below:

Notice where premises uninhabitable

21. (1) Notwithstanding subsection 18(1) and paragraph 18(3)(a), where a landlord contravenes statutory condition 1 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 effective immediately.

(2) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where an action of, or a failure to act by, a tenant makes a residential premises unfit for habitation, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises effective immediately.

(3) In addition to the requirements under section 34, a notice under this section shall

- (a) be signed by the person providing the notice;
- (b) state the date on which the rental agreement terminates and the tenant intends to vacate the residential premises or the date by which the tenant is required 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: Termination Notice

Landlords' Position

12. The landlord submitted that the termination notice was valid. They testified it was issued under s. 21(2)(3) after the tenants had the power to the apartment shut off. They argued that the tenants' timeline was not supported by the documentary evidence.

Tenants' Position

13. The tenant submitted that the termination notice was invalid. They say they had the power disconnected only after the landlord illegally entered the premises (which the landlord denies).

Analysis

14. For a termination notice to be valid, it must comply with all relevant sections of the *Act*. All notices under the *Act* are subject to section 34, reproduced above.
15. Both parties provided a copy of the termination notice (LL#1). LL#1 is in writing in the form prescribed by the minister. It contains the name and address of the recipient. Notably, it names only one of the two tenants. This does not render it invalid, though it may render it unenforceable against the other tenant. It identifies the residential premises for which it was given. It identifies itself as being given under s. 21(2)(3) of the *Act*. It therefore complies with s. 34 of the *Act*.
16. LL#1 was signed by the person providing the notice. It states the date on which the tenant is required to vacate the premises. It was served in accordance with s. 35(2)(f) of the *Act*. It therefore complies with s. 21(3) of the *Act*.
17. The only remaining question is whether or not LL#1 complies with s. 21(2) of the *Act*, i.e., whether through an action or failure to act the tenant rendered the premises unfit for habitation. They have admitted they had the power disconnected. A building without power is not fit for habitation. LL#1 is therefore valid.
18. The tenant's argument that they had the power disconnected due to the landlord's actions is irrelevant. If the landlord entered illegally and the tenants felt this warranted the termination of the rental agreement, it was open to them to serve the landlords a termination notice under s. 20(1) or s. 23(1). They did not.

Issue 2: Damages

Landlords' Position

19. The landlord seeks \$449.91 in damages divided among 6 items, including damaged window blinds, damaged floor, damaged walls, and fees for cleaning. They testified that the apartment was left in an unclean state.

Tenants' Position

20. The tenants dispute the damages. They made the point that they had limited time to clean as the landlord issued them a termination notice effective immediately.

Analysis

21. The landlord claimed \$41.50 for cleaning the exterior driveway and walkway. They testified that they did this through self-labour. LL#2 (pages 5, 6, and 7) show the outside of the apartment. Cigarette butts are visible on the lawn, in a planter, and on the exterior stairs. Several mats which look like car floor mats are laying on the lawn. The landlords testified that there were also nuts and bolts scattered on the driveway and walkway.

22. The tenants say that they left no mess except what may have been buried in the snow. They say that as they moved out while snow was down, they could not have cleaned these items.
23. Considering the evidence in its totality, I am satisfied on a balance of probabilities that the exterior of the premises was left in an unclean state and the level of untidiness necessitated that the landlord spent two hours or more cleaning. I do not agree that the presence of snow affects the tenants' duty to restore the apartment to a clean state. As the immediate termination was a direct result of the tenant's decision to disconnect the power, I find it does not shield the tenants from liability for this portion of the claim. Self-labour is awarded at the rate of minimum wage + \$8/hour. This portion of the landlords' claim succeeds in the amount of \$47.20.
24. The landlords claim \$100.00 for the replacement of damaged window blinds in the rear bedroom, which they say are torn and no longer raise or lower. A picture of these blinds was provided (LL#2 page 1). They testified that the window blinds cost about \$75.00 and that they installed them themselves. They testified that the blinds were at least 8 years old.
25. The tenants correctly pointed out that no receipt was provided. They also submitted that the blinds were broken when they moved in.
26. The following is an excerpt from the Residential Tenancies Program Policy and Procedure Guide 9-003 (emphasis mine):

Requirements for the Hearing

During a hearing in which the applicant is seeking an award in compensation for damages, the applicant must establish the costs of repairing or replacing the damaged items. If the damaged item has already been repaired or replaced, a receipt or invoice should be submitted into evidence. Where the item has not yet been replaced or repaired, an estimate from a reputable contractor, technician, etc., should be submitted. If the invoice or estimate is for the cost of more than one item, applicants should ensure that the individual cost of each item can be ascertained.

The applicant is also required to establish that the claimed items were damaged and to establish the extent of the damage. This evidence may include photographs, videos, sworn affidavits or witness statements, etc. Furthermore, it must be established that the damage occurred during the course of the tenancy. Incoming and outgoing condition reports are helpful in making a determination here, as are time-stamped photographs.

This policy serves an important purpose in preventing the abuse of the dispute resolution system. If applicants were not required to provide receipts and/or estimates where possible, bad faith actors could easily inflate their costs and claim more than they are due. Further, respondents would have a difficult task in trying to refute these claims. Placing the onus on the applicant provides a safeguard. Therefore, this tribunal does not award damages in the absence of receipts/invoices/estimates where they would be appropriate. This portion of the landlords' claim fails.

27. The landlords claim \$108.31 for the repair of a deep scratch to the engineered hardwood floor. A photo of this scratch was provided (LL#2 page 2). They testified that they were

given a quote that the replacement would cost \$158.31 but discounted \$50.00 from the claim to account for depreciation.

28. The tenants submit that the scratch was present on move-in and that no quote was provided for the contractor.
29. In the absence of a quote, this portion of the landlords' claim fails.
30. The landlords claim \$50.00 for plastering and painting over holes and abrasions on the walls. They did this themselves and said it took about two hours. Some examples of these holes and abrasions were provided (LL#2 page 3 and 4).
31. The tenants say they did their own repairs. They speculated that the damage to the walls was still not fixed. They suggested that what was there was wear and tear.
32. Based on the evidence in its totality I am satisfied on a balance of probabilities that the damage to the walls was caused by an act of the tenants or someone they allowed onto the property. The photos provided justify two hours of self-labour. This portion of the landlords claim succeeds in the amount of \$47.20.
33. The landlords claim \$110.00 for damages resulting from smoking inside of the apartment. They testified that they hired a repairperson to perform maintenance on the air exchanger who charged about \$750.00. They say they claim only for the replacement of filters and doing detailed cleaning that would not have been necessary had the tenants not smoked inside of the apartment.
34. The tenants denied smoking in the apartment.
35. In the absence of an invoice, this portion of the landlords' claim fails.
36. Finally, the landlords claim for \$40.00 as they say the tenants failed to return the keys. They testified that the actual cost to replace the locks was \$160.00, but they sought only a portion of this.
37. In the absence of a receipt, this portion of the landlord's claim fails.

Issue 3: Unpaid Rent and Late Fees

Landlords' Position

38. The landlords claim for unpaid rent in the amount of \$20.00 from February 2024. A rent ledger (LL#3) was provided in support of this, as were a series of online transfer receipts (LL#4). They also seek late fees.

Tenant's Position

39. The tenants testified that they always paid the rent in full. They agree that they have been a day or two late here and there but submit that the landlord consented to this.

Analysis

40. The tenants' account simply does not match the receipts provided. Based on the totality of the evidence provided, I accept on a balance of probabilities that the tenants owe \$20.00 rent from February 2024.
41. The minister has set the rate for late fees at \$5.00 for the first day and \$2.00 for each day after that, to a maximum of \$75.00. As rent has been overdue by more than 35 days, the maximum late fee applies.
42. The landlords' claim for unpaid rent succeeds in the amount of \$20.00. The landlords' claim for late fees succeeds in the amount of \$75.00.

Issue 4: Refund of Rent

Tenants' Position

43. The tenants seek a refund of rent for the last week of March. They testified that their use and enjoyment was compromised by the landlord allegedly entering their residence illegally. They also submit that due to the termination notice above they were unable to use the premises. They say that new tenants were moving in on 25-March-2024.

Landlords' Position

44. The landlords are opposed to the refund of rent. They argue that the tenants were seeking to end the term early without notice and this is why they had the power disconnected (the tenants deny this). To allow them to recover the rent for the last week would reward this behaviour and create a perverse incentive. The landlords say they were unable to re-rent the apartment during the last week of the month.

Analysis

45. I agree with the landlords. Viewing the evidence in its totality, I conclude on a balance of probabilities that the tenants cancelled the power deliberately to provoke an eviction notice. I also accept the landlords' evidence that they were unable to find new tenants for the last week of the month. In these circumstances, it would not be appropriate to award a refund of rent.
46. The tenants' claim for a refund of rent fails.

Issue 5: Security Deposit

Analysis

47. The landlords are owed moneys and therefore are entitled to apply the security deposit against the total owed. The remainder must be returned to the tenants. The security deposit in this case is \$600.00.
48. Interest is applied to security deposits at a rate set by the Minister. During the relevant years prior to 2024, the interest rate was 0%. For 2024, the interest rate was simple

cumulative interest of 1% annual. This results in a total interest of \$2.72 to the hearing date.

Decision

49. The termination notice dated 24-March-2024 is valid.
50. The landlords' claim for damages succeeds in the amount of \$94.40.
51. The landlord's claim for unpaid rent succeeds in the amount of \$20.00.
52. The landlords' claim for late fees succeeds in the amount of \$75.00.
53. The tenants' claim for a refund of rent fails.
54. The landlords are owed moneys and therefore may apply the security deposit and interest against the amount owed. The remainder must be returned to the tenant.
55. As the tenants were unsuccessful in their claim, they will not be awarded costs.
56. As the landlords were partially successful in their claim, they are entitled to have their reasonable hearing expenses covered. In this case, their hearing expenses consisted of the \$20.00 application fee. They also claimed for \$20.00 for the cost of hiring a Commissioner of Oaths but in the absence of a receipt I decline to grant this cost.

Summary of Decision

57. The landlord shall pay to the tenants \$393.32 as follows:

Security Deposit.....	\$602.72
Damages.....	\$94.40
Unpaid Rent.....	\$20.00
Late Fees.....	\$75.00
Hearing expenses....	\$20.00
Total.....	\$393.32

12-July-2024

Date

[Redacted]
Seren Cahill
Residential Tenancies Office