

Residential Tenancies Tribunal

Application 2024-0382-NL

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:01 a.m. on 29-August-2024.
2. The applicants, [REDACTED] (applicant 1) and [REDACTED] (applicant 2), hereinafter referred to as "the landlords" attended by teleconference.
3. The respondents, [REDACTED] (respondent 1) and [REDACTED] (respondent 2), hereinafter referred to as "the tenants" attended by teleconference.

Preliminary Matters

4. The landlords submitted an affidavit with their application stating that they had served the tenants with the notice of hearing electronically by email to; [REDACTED] on 4-July- 2024 (LL#1). The tenants confirmed receipt of the documents on that date. In accordance with the *Residential Tenancies Act, 2018*, this is good service.
5. There was a verbal month-to-month rental agreement which commenced on 1-October-2023. The tenants vacated the unit mid-January and returned the keys to the unit on 31-January-2024. Rent was \$950.00 per month, due on the 1st day of each month. A security deposit of \$500.00 was paid on 27-September-2023 and has been returned to the tenants.

Issues before the Tribunal

6. The landlords are seeking:
 - a. Validity of the Termination Notice
 - b. Rent Paid \$6650.00
 - c. Compensation for damages \$1494.99
 - d. Hearing expenses \$48.75

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in Sections 46 and 47 of the *Residential Tenancies Act, 2018*.

8. Also, relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 7: Provision of rental agreement and information and Section 35: Service of documents. Also, relevant and considered in this decision are the following sections of the *Residential Tenancies Policy Manual*: Section 9-3: Claims for damages to rented premises, Section 9-5: Life expectancy of property and Section 12-1: Recovery of costs.

Issue # 1: Validity of Termination Notice

Landlord's and Tenant's Positions

9. The landlords testified that the tenant's gave them a 1-month termination notice via *Facebook Messenger* which was their normal mode of communication. Applicant 1 testified that the notice was sent to them on December 28 stating that they would be leaving at the end of January. The landlords stated that although they did not sign a rental agreement, the tenants verbally agreed that they would stay until at least August 2024 and the landlords stated that it was confirmed in writing in a text message. The landlords submitted a copy of the text message to support the claim (LL#2). The landlords are not questioning the content of the notice but rather whether or not a 1-month notice was sufficient given they all agreed to a term rental agreement. The tenants did not dispute that they gave a 1-month notice and agreed with the landlords that *Facebook Messenger* was their mode of communication. Respondent 1 stated that they had legitimate reasons to terminate the tenancy.

Analysis

10. Section 7(3) of the *Residential Tenancies Act, 2018* states:

Provision of Rental Agreement and information

7.(3) Where a landlord and tenant enter into an oral or implied rental agreement, the landlord shall provide the tenant with a written notice containing the information prescribed in the regulations within 10 days after entering into the rental agreement, and where requested by the landlord, the tenant shall sign an acknowledgement of receipt.

11. I accept that both parties talked about the rental agreement and a text message shows that the tenants agreed to stay till at least August, however the landlord failed to comply with Section 7(3) of the *Act* as stated above. Without a written term rental agreement, the tenancy was a month-to-month in which case the tenants must provide the landlords with a termination notice of not less than 1 month before the end of the rental period. In accordance with Section 35(1) of the *Residential Tenancies Act, 2018* the tenant's notice to terminate may be delivered to the landlords by sending it electronically where it is provided in the same or substantially the same form as the written notice and where the landlord has provided an electronic address to receive documents. I accept that *Facebook Messenger* was the normal mode of communication between both parties. I find that the tenant's were in their right to give a 1-month termination notice given that the tenancy was a month-to-month and for that reason, I find that the termination notice given on 28-December-2023 was a valid notice and the tenants were not required to enter any of their exhibits into evidence.

Decision

12. The termination notice dated 28-December-2023 was a valid notice.

Issue # 2: Rent Paid \$6650.00

Landlord's and Tenant's Positions

13. The landlord's testified that the tenants agreed to reside in the unit until at least August 2023 and they vacated the unit early in January 2024. The landlords are seeking their rental loss for the period of February – August in the amount of \$6650.00. The tenants disputed that they should have to pay rent for the period they did not reside in the unit.

Analysis

14. It has been determined that a proper termination was given by the tenants on 28-December-2023 as per paragraph 12 above and for that reason, I find that rent was not required to be paid for the months of January – August.

Decision

15. The landlord's claim for *rent paid* does not succeed.

Issue # 3: Compensation for Damages \$1494.99

Landlord's and Tenant's Positions:

16. The landlords testified that the glass stovetop had cracks in a couple of areas along the top corner / side, and although the cracks did not affect the functionality of the stovetop, it devalued the stovetop. The landlords are claiming \$1264.99 to have the stovetop replaced and an installation fee of \$230.00 for 2 hours of electrical work. The landlords submitted a photograph of the damaged stovetop (LL#3) and an online quote from *Cohens* to support the claim (LL#4).

17. The tenants did not dispute that they caused the damage and stated that it was an accident. Respondent 1 testified that she dropped a bottle of olive oil from the spice cupboard located above the stovetop, accidentally hitting the corner of the stovetop causing the cracks. The tenants disputed that they should be responsible for the full cost to replace the stovetop as the damage was cosmetic and did not affect the functionality of the stovetop and as it was merely an accident. The tenants did not dispute the cost claimed for installation and stated that it is a reasonable amount.

Analysis

18. In accordance with *Residential Tenancies Policy 9-3*, the applicant is required to show:

- *That the damage exists;*
- *That the respondent is responsible for the damage, through a willful or negligent act;*
- *The value to repair or replace the damaged item(s)*

19. In accordance with Section 9-3 as stated above, I accept that the landlords were able to show that the damage exists, the tenants did not dispute that they caused the damage, and the landlords were able to show the value to replace the damaged item. With regards to the tenant's testimony that the damage was caused accidentally and that the damage did not affect the functionality of the stovetop, I find that although the damage was not done through a willful act, it still falls under negligence on the part of the tenants. Tenants have a responsibility to ensure that rental units are returned in the same

manner as they were given and it doesn't matter if the damage affects the functionality of the stovetop or not, it is still damage that occurred during the tenancy. I asked the landlords the age of the stovetop and applicant 1 responded that it was installed in June 2018. In accordance with Section 9-5 of the *Residential Tenancies Policy*: Depreciation and life expectancy of property, glass stovetops have a life cycle of approximately 20 years. As the stovetop is almost 6 years old, there is roughly 14 years (70%) of the stovetop's lifespan remaining. The landlords could show that a new stovetop can be purchased for \$849.99 plus tax, and for that reason I find that the tenants are responsible for the cost to replace the stovetop less depreciation in the amount of \$684.24. Also, the tenants did not dispute the landlords claim for installation costs in the amount of \$230.00, and as such, I find that the tenants shall pay the landlords a total of \$914.24 to replace the stovetop.

Decision

20. The landlord's claim for damages succeeds in the amount of \$914.24.

Issue # 4 Hearing expenses \$48.75

21. The landlord's paid an application fee of \$20.00 to *Residential Tenancies* and also incurred a fee of \$28.75 to have the affidavit witnessed by a *Commission of Oaths*. The landlords submitted copies of receipts to support the claim (LL#5). Section 12-1 of the *Residential Tenancies Policy* states that in general, claimable costs may include the filing fee and any other costs incurred in preparation for the hearing. As the landlord's claim has been successful for damages, I find that the tenants shall pay the hearing expenses.

Decision

22. The landlords claim for *hearing expenses* succeeds in the amount of \$48.75.

Summary of Decision

23. The termination notice issued on 28-December-2023 was a valid notice.

24. The tenants shall pay the landlords \$962.99 as follows:

Compensation for damages	\$914.24
Hearing expenses	48.75

Total	\$962.99
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September 20, 2024

Date



Pamela Pennell, Adjudicator
Residential Tenancies Office