

Residential Tenancies Tribunal

Application 2024-0424-NL

Oksana Tkachuk
Adjudicator

Introduction

1. Hearing was called at 1:55 p.m. on 25-June-2024.
2. The applicant, [REDACTED], represented by [REDACTED] and [REDACTED], hereinafter referred to as "the landlord" attended by teleconference.
3. The respondent 1, [REDACTED], hereinafter referred to as "the tenant 1" attend via teleconference. The respondent 2, [REDACTED], hereinafter referred to as "the tenant 2" did not attend.

Preliminary Matters

4. The landlord's representatives submitted 2 affidavits with their application stating that they had served the tenants electronically by emails; [REDACTED] and [REDACTED] on 6-June-2024 (LL#1 and LL#2). The landlord's representatives also submitted proof that the emails were sent on that date (LL#3 and LL#4). In accordance with the *Residential Tenancies Act, 2018* this is good service.
5. There was a written fixed term rental agreement which commenced on 1-May-2024 and ended on 30-April-2025. Rent was \$1300.00 per month due on the first of each month. A security deposit was not paid.

Issues before the Tribunal

6. The landlord is seeking:
 - Validity of termination notice.
 - Rent paid \$1300.00.
 - Other expenses \$500.00.
 - Hearing expenses \$90.00.

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 9: Landlord and tenant relationship, Section 34: Requirements for notices, and following sections of the *Residential Tenancies Policies Manuel*: 2-04 Deposits, Payments and Fees and Section 12-1: Recovery of Costs.

Issue # 1: Validity of termination notice

Relevant Submissions:

9. The landlord's representatives are questioning the validity of termination notice given by tenants on 27-April-2024. The landlord's representatives submitted a copy of email that tenants sent on 27-April-2024 to terminate rental agreement (LL#5).

Landlord's Position:

10. The landlord's representatives testified that the tenants signed the rental agreement on 27-April-2024. The landlord's representatives stated that the tenants had access to the rental agreement for review and conducted a walkthrough of the apartment with their employee [REDACTED] on both 24-April-2024 and 27-April-2024 and submitted a copy of her statement to support the claim (LL#6). The landlord's representatives testified that the tenants also signed the rental inspection report on that date after they viewed the apartment and submit a copy of the inspection (LL#7). Therefore, the landlord's representatives stated that the rental agreement commenced on 27-April-2024. The landlord's representative submitted a copy of rental agreement to support the claim (LL#8).
11. The landlord's representatives stated that few hours after signing the rental agreement, the tenants emailed the landlord citing their intention to terminate the rental agreement, stating that the property was uninhabitable and that they could not move in. The landlord's representatives stated that they did not advertise the rental unit as a new unit or unit after full renovation and that the tenants had opportunity to see the condition of the unit prior signing the rental agreement. The landlord's representatives believe that the email from tenants is not a proper or valid termination notice.

Tenant's Position:

12. The tenant asserts that there was insufficient time to complete the walkthrough thoroughly. The tenant stated that the unit was dirty, the basement was covered in mold and had a strong odor, and the walls throughout the house were scratched and in poor condition. The tenant claims that these issues were not fully apparent during the walkthrough and were only realized after the landlord's worker had left. The tenant stated that they emailed the landlord not to terminate the rental agreement outright, but to express their willingness to stay if the landlord agreed to the renovation of the basement, replacement of the bathtub, and through cleaning of the rental unit. The tenant stated that in response, the landlord said to leave the keys. Following the directive, they left the keys in the kitchen and never had any communication since that time.

Analysis

13. Section 34 of the *Residential Tenancies Act, 2018* states:

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.*

14. I accept the tenant's testimony that she was disappointed with the condition of the rental unit and decided not to move in on 27-April-2024. The tenant stated that she was willing to move in under certain conditions, some of which involved renovating the unit. The landlord stated that the unit was not a new home, and the tenant was aware of the condition of the unit before signing the rental agreement, and as such the landlord stated that he should not be given a choice to undergo renovations in order to maintain the tenancy. I accept that the residential tenancies relationship imposes certain responsibilities and obligations, including the requirement to provide a valid termination notice if the tenants wish to terminate the rental agreement. When entering into a rental agreement, the onus is on the tenants to be aware of what and where they are renting and once in a residential tenancy relationship, a proper notice to terminate is required. In accordance with Section 34 of the *Act* as stated above, I find that the email which cited habitability concerns, does not meet the requirements of a proper termination notice and for this reason, I find that the termination notice is not a valid notice.

Decision

15. The termination notice is not a valid notice.

Issue # 2: Rent paid \$1300.00

Landlord's Position

16. The landlord's representative testified that the rent is outstanding in the amount of 1300.00 for the month of May 2024 as the tenants refused to pay rent unless the landlord agreed to renovate the rental unit. The landlord's representatives stated that due to the tenants' premature termination of the rental agreement, they were unable to secure another tenant for the month of May.

Tenant's Position:

17. The tenant disputes that she owes rent to the landlord for the month of May as she never moved into the rental unit.

Analysis

18. Section 9 of the *Residential Tenancies Act 2018* states:

Landlord and tenant relationship

9. (1) A relationship of landlord and tenant takes effect when the tenant is entitled to use or occupy the residential premises whether or not the tenant actually uses or occupies it.

.....

19. Non-payment of rent is a violation of the rental agreement. Rent is required to be paid by the tenant to the landlord before or during the use or occupancy of the residential premises. According to the Section 9 of the *Act* as stated above, the tenancy relationship took affect when the rental agreement was signed whether or not the tenants actually took possession of the unit. It was determined in paragraph 15 above that the tenant did not give a proper termination notice and as such, I find that the tenants are responsible to pay rent for the month of May in the amount of \$1300.00.

Decision

20. The landlord's claim for rent succeeds in the amount of \$1300.00.

Issue # 3: Other expenses \$500.00

Landlord's Position:

21. The landlord's representative stated that according to paragraph 59 of the rental agreement (LL#8), the tenants are responsible to pay a re-rent levy of \$500.00 if they move out prior to the natural expiration of the rental agreement.

Tenant's Position:

22. The tenant disputes that she is responsible for \$500.00 levy.

Analysis

23. The landlord did not clearly communicate the nature and justification for the expenses in the amount of \$500.00 as claimed in the application and the tenants were not informed about the specifics of this charge when served the hearing document. Applicants are required to clearly state in their application what they are seeking against the respondents prior to the hearing and in this case, the landlord failed to identify exactly what they were seeking. This prevented the tenants from preparing their defense for the hearing and for this reason, I find that the tenants are not responsible to pay the \$500.00 levy charge as sought by the landlord.

Decision

24. The landlord's claim for the other expenses does not succeed.

Issue # 4: Hearing expenses \$90.00.

Relevant Submission

25. The landlord paid \$20.00 for the application fee and \$70.00 for notary service and is seeking reimbursement. The landlord's representative submitted a copy of the receipts to support the claim (LL#9 and LL#10).

Analysis

26. In accordance with Section 12-1 of the *Residential Tenancies Policy Manual: Recovery of Costs*, claimable costs may include the \$20.00 filing fee and any other costs incurred in the preparation for a hearing, including notary fees. As the landlord's claim is successful, I find that the tenants are responsible for the hearing expenses.

Decision

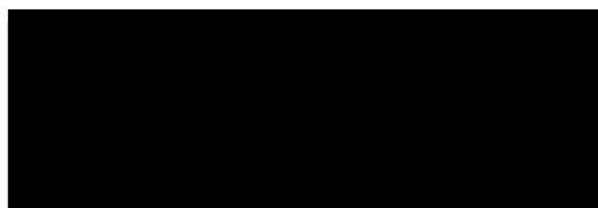
27. The landlord's claim for hearing expenses succeeds in the amount of \$90.00.

Summary of Decision

30. The termination notice is not a valid notice.
31. The tenants shall pay the landlord \$1390.00 as follows:

Rent	\$1300.00
Hearing expenses.....	\$90.00
Total.....	<u>\$1390.00</u>

July 5, 2024
Date



Oksana Tkachuk, Adjudicator
Residential Tenancies Office