

Residential Tenancies Tribunal

Application 2024-0465-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 27-June-2024 at 9:12 am.
2. The applicant, [REDACTED], hereinafter referred to as the landlord, attended via teleconference.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as the tenants, also attended via teleconference.

Preliminary Matters

4. The respondents acknowledged they received notice of this hearing more than ten days before the hearing date.
5. The second tenant named above was not party to the rental agreement, though she was named as an occupant. She asked to be removed as a party. The landlord was opposed on the grounds that said tenant was always a resident of the house, involved with meeting the tenant's responsibilities, and was the person who provided the rent.
6. I agree with the landlord. The second named tenant above meets the definition of a tenant as defined in s. 2(m) of the *Residential Tenancies Act, 2018* (the *Act*).

Issues before the Tribunal

7. Should the landlord's claim for unpaid rent and late fees be granted?
8. Should the landlord's claim for damages be granted?
9. What is the 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 *Act*.

Issue 1: Unpaid Rent

Landlord's Position

11. The landlord testified that the rental term ran from the 16th of the month to the 15th of the next month. She seeks the full monthly rent of \$1500/month for the months of January-February, February-March, and March-April, for a total of \$4500. She testified that the tenants moved out on 5-January-2024 after providing only two weeks' notice. She says she was not able to find a new tenant until 15-April-2024.

Tenant's Position

12. The tenants testified that they realized mid-December 2023 that they were unable to stay at the premises as one of the tenants was suffering from health problems due to black mold on the premises. They said they notified the landlord via text and email that they would need to vacate.

Analysis

13. The landlord testified that the rental agreement was a fixed term. She says that when the agreement elapsed, another agreement was made to extend the term to 15-July-2024, and this agreement was made via text message. Copies of these text messages were provided (LL#1, pages 1-3).
14. Under s. 18(2)(c) of the *Act* a tenant is required to advise the landlord that they are terminating the rental agreement not less than 2 months before the end of the term where the residential premises is rented for a fixed term. Notwithstanding this, other provisions of the *Act* may allow a tenant to provide shorter notice in certain circumstances.
15. The tenants submit that they were forced to move out because of unaddressed issues with mold. Where a landlord breaches a material term of the rental agreement, a tenant may provide a notice to terminate early under s. 20(2) of the *Act*. Where a landlord causes or allows premises to become uninhabitable, a tenant may provide a notice to terminate early under s. 21(2) of the *Act*.
16. The tenants testified that they provided the landlord notice that they would be terminating the agreement via text message and email. A copy of this text was provided (LL#2). It does not specify what section it is under. It does not contain the address of the recipient. It is not a valid notice under s. 34 of the *Act*.
17. Considering the evidence in its totality, I find on a balance of probabilities that no valid notice of termination was provided. In the absence of a valid notice of termination, the landlord is entitled to recover unpaid rent subject to her duty to mitigate her losses by attempting to finding a new tenant. The landlord testified that she attempted to find a new tenant sooner, but the winter was a difficult time.

18. The landlord is entitled to two months' notice under s. 18(2)(c). The landlord's claim for unpaid rent succeeds in the amount of \$3000.
19. S. 15 of the *Act* states that where a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister. The minister has set the rate for late fees at \$5 for the first day and \$2 for each day thereafter to a maximum of \$75. As rent has been overdue for more than 35 days, the maximum late fee applies.

Issue 2: Damages

Analysis

20. The landlord claims for \$2330.75 in damages, divided amongst 8 items. Each item will be dealt with individually below. As stated in the Residential Tenancies Program Policy and Procedure Guide policy 09-003, applicants seeking damages must provide sufficient evidence to establish the cost of repairing or replacing the damaged items and to establish the extent of the damage.
21. The landlord claims \$500 for the cleaning of the apartment, as she testified that the tenants left the premises in an unclean state. The tenants agreed that some amount of money for cleaning may be appropriate.
22. Viewing the evidence in its totality, I am unable to assess the extent of the uncleanliness, and therefore am not in a position to evaluate whether the level of compensation claimed is legitimate. The landlord has failed to meet the evidentiary onus, and this portion of their claim therefore fails.
23. The landlord claims \$200 for the disposal of garbage. A screenshot (LL#3) was provided of a \$150 e-transfer made to the person the landlord hired to dispose of the garbage which the landlord says was left at the apartment. An image of the garbage was provided (LL#4 pages 4 and 5). The tenants took no position on this claim. Considering the evidence in its totality, I conclude on a balance of probabilities that the tenants left this garbage in or on the premises and are responsible for the cost of its removal. This portion of the landlord's claim succeeds in the amount of \$150.
24. The landlord claims \$400 for a damaged sofa. The tenants ceded this was appropriate. This portion of the landlord's claim succeeds.
25. The landlord claims \$200 for a damaged bed. The tenants ceded this was appropriate. This portion of the landlord's claim succeeds.
26. The landlord claims \$250 for snow-clearing. The tenants ceded this was appropriate. This portion of the landlord's claim succeeds.
27. The landlord claims \$119.50 in gas for the extra driving she needed to do in order to make sure the apartment was made ready for new tenants on short notice. Receipts were provided (LL#4). The tenants took no position. I conclude on a balance of

probabilities that the tenants are liable for this extra expense. This portion of the landlord's claim succeeds in the amount of \$119.50.

28. The landlord claims for \$150 in damages to a cabinet door done by the tenant's cat. The tenants ceded that they should be responsible for this damage "if it was damaged." No documentary evidence of this damage was provided. The landlord has failed to establish the existence and extent of this damage and so this portion of the landlord's claim fails.
29. Finally, the landlord claims \$511.75 for the cost of pest removal, as she alleges the tenants' wilful or negligent act caused a rat infestation. A receipt was provided (LL#5). The landlord also provided a letter (LL#4 page 3) from the municipality alerting her of the presence of a supposed rat infestation and requiring her to remedy it, though the copy provided was mostly illegible. The tenants took no position.
30. No evidence was provided of any acts or omissions by the tenants that might have contributed to the potential for a rat infestation. There was no direct evidence provided of rats in the premises. Even if there was, I cannot necessarily infer that the tenants caused the rodent issue simply because they had possession of the home at the time of the issue. It is possible that the animals were seeking warmth in the winter and targeted whichever homes they could find a way into. It is true that improper garbage disposal practices can contribute to rodent issues, but no evidence of such practices was provided. Accordingly, this portion of the landlord's claim fails.
31. The tenants submitted evidence that the premises had a persistent mold problem which the landlord failed to remedy, even when served a notice to repair (though the landlord disputes this). While this is a serious concern, it is not strictly relevant to the above analysis. In the absence of an application or counterapplication from the tenants seeking some kind of remedy, such as a refund of rent, I decline to make a finding of fact as to whether the landlord violated the rental agreement and/or the *Act*.

Issue 3: Security Deposit

32. As the landlord is owed moneys, they are entitled to apply the security deposit against the sum owed. The security deposit in this case is \$1125.00. S. 14(7) of the *Act* states that 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. Prior to 2024, the interest rate prescribed by the regulations was 0% for the relevant years. In 2024, the rate was set to 1% cumulative simple annual interest. That results in total interest at the time of the hearing being \$5.53, for a total of \$1130.53.

Decision

33. The landlord's claim for unpaid rent succeeds in the amount of \$3000.00.
34. The landlord's claim for late fees succeeds in the amount of \$75.00.
35. The landlord's claim for damages succeeds in the amount of \$1119.50.

36. The landlord may apply the \$1130.53 security deposit with interest against the moneys owed.

Summary of Decision

37. The tenants shall pay to the landlord \$3063.97 as follows:

Unpaid Rent.....	\$3000.00
Late Fees.....	\$75.00
Damages.....	\$1119.50
Less Security Deposit.....	-\$1130.53
Total.....	\$3063.97

26-July-2024

Date



Seren Cahill
Residential Tenancies Office