

Residential Tenancies Tribunal

Application 2024-0544-NL & 2024-0585-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 5-August-2024 at 9:05 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, were represented at the hearing by their authorized representative, [REDACTED], who also attended via teleconference. When necessary to distinguish, [REDACTED] is hereinafter referred to as the first tenant and [REDACTED] is hereinafter referred to as the second tenant.

Preliminary Matters

4. The respondents acknowledged they received notice of this hearing more than ten days before the hearing date. The applicant acknowledged they received notice of the counterclaim.
5. The landlord said at the hearing that he was unexpectedly able to recover a refrigerator that made up part of his claim. He therefore sought to amend his claim to reduce it by \$977.49.
6. The tenants' representative testified that he received no exhibits or evidence from the landlord, and therefore motioned that said evidence be excluded. The landlord testified that he provided the exhibits to the tenants on 29-July-2024 via email, the same emails that he used to provide a copy of the exhibits to this office. I confirmed internally that the emails were received at the date the landlord testified, that the evidence is included in these emails, and that they list the tenants' email as an additional recipient. I note that this email address is the same one provided in the rental agreement. This email is the personal address of the first tenant. The tenants' representative suggested it was inappropriate for the landlord to contact the first tenant as he was asked to direct communication to the second tenant. The landlord submitted that he was given no other email to use for the receipt of documents. I accept on a balance of probabilities that the

landlord made a good faith effort to serve the tenants the evidence to the best of his ability and therefore deny the motion to exclude the evidence.

7. I asked the tenants' representative if he would like for the matter to be postponed so he would have the opportunity to review the evidence. He responded that in the interest of a speedy resolution he would prefer to continue the hearing as originally scheduled.

Issues before the Tribunal

8. Should the landlord's claim for damages be granted?
9. Should the landlord's claim for unpaid rent and late fees be granted?
10. Should the tenant's application for return of possessions be granted?
11. Should the tenant's claim for a refund of rent be granted?
12. Is the termination notice dated 27-January-2024 valid?
13. What is the proper disposition of the security deposit?

Legislation and Policy

14. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).
15. Also considered and referred to in this decision are sections 18(2), 18(9), and s. 34 of the *Act*, reproduced below:

Notice of termination of rental agreement

18. ...

(2) A landlord shall give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises

- (a) not less than 4 weeks before the end of a rental period where the residential premises is rented from week to week;
- (b) not less than 3 months before the end of a rental period where the residential premises is rented from month to month; and
- (c) not less than 3 months before the end of the term where the residential premises is rented for a fixed term.

...

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

- (a) be signed by the person providing the notice;
- (b) be given not later than the first day of a rental period;

- (c) state the date, which shall be the last day of a rental period, 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
- (d) 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: Damages

16. The landlord seeks \$1403.72 in damages divided amongst 7 items. For clarity, the items will be addressed separately below.
17. It should be noted in the outset that, in accordance with the Residential Tenancies Program Policy and Procedure Manual policy 09-003, to succeed in a claim for damages a landlord must establish that the premises were damaged and that the damage was caused by the wilful or negligent act of the tenant or a person they allowed on the premises. The landlord is required to provide sufficient evidence to establish the extent of the damage as well as sufficient evidence to establish the cost of repairing or replacing the damaged item. Wherever possible, this ought to include receipts, invoices, and/or estimates.
18. The tenants responded to the allegations of damages via a pair of duly sworn affidavits from themselves indicating that there was no damage to the premises during the tenancy or the time the tenants vacated. An unsworn affidavit was submitted on behalf of one of the tenants' friends who also indicated they were familiar with the premises and that there was no damage in the apartment. These affidavits are provided in T#6. All three affidavits acknowledged one exception, which is the presence of black mold. The tenants say the landlord was notified of the mold and nothing was done.
19. LL#11 contains photos of the premises prior to the tenancy. Not all parts of the premises are visible but those that are shown appear to be clean and in good repair, with no visible damage.
20. The landlord claims \$100.00 for the repair of an approximately 8 cm by 8 cm hole in the kitchen wall. LL#7 page 2 shows this hole. The landlord testified that he repaired this damage himself. He said the repair took him about three hours to complete, including time to acquire supplies.
21. Considering the evidence in its totality, I find that the kitchen wall was damaged by the wilful or negligent actions of the tenants or a person they allowed on the premises.

Notwithstanding the tenant's sworn affidavits to the contrary, I do not see any other explanation for the clearly visible hole in the photo provided by the landlord. In accordance with the policy highlighted in paragraph 17 above, I decline to award compensation for supplies in the absence of a receipt or other form of documentary evidence. However, the landlord's labour is compensable at the value set by policy, which is a rate of minimum wage plus eight dollars an hour, currently resulting in a self-labour rate of \$23.60/hour.

22. This portion of the landlord's claim succeeds in the amount of \$70.80.
23. The landlord claims \$50.00 for the removal and disposal of garbage he says was left on the premises. A modest amount of garbage is visible through LL#7 and LL#10. The landlord testified that he disposed of the garbage at the local waste disposal facility. This is approximately a seventeen-minute drive one way.
24. The tenants submitted that they intended to return to the premises in order to clean them but felt uncomfortable doing so as landlord-tenant relationship had deteriorated, and they did not feel safe to do so.
25. Tenants are required under statutory condition 2 listed under s. 10 of the Act, and similarly are required to leave the premises in a clean state upon vacating. An intention to clean which is for some reason foiled by circumstance does not relieve the tenants of this requirement. The tenants failed to meet the requirement in this case and the landlord is entitled to compensation.
26. The Residential Tenancies Program does not have an explicit policy dictating compensation for mileage. In recognition that the cost of driving is beyond the mere time spent doing so, representing both gas and vehicle wear and tear, I turn to the Newfoundland and Labrador government automobile reimbursement rate for using a private vehicle at work. This rate is intended to compensate employees for the cost incurred, so that they are neither rewarded nor punished for using private vehicles at work. I therefore infer that it is the Treasury Board Secretariat's best, most accurate assessment of the actual cost incurred per kilometre driven. The basic rate for June 2024 is \$0.4151/km. The distance between the premises and the waste disposal facility is 17.7 km, or 35.4 km both ways. $17.7\text{km} * \$0.4151/\text{km} = \14.69 . The time taken is 34 minutes driving plus an additional estimated 20 minutes to wait and dispose of the items yields a total of 54 minutes, which multiplied by the self-labour rate gives a total of \$21.24.
27. This portion of the landlord's claim succeeds in the amount of \$35.93.
28. The landlord claims \$212.40 for the cleaning of the premises, which he testified he did himself over the course of 9 hours. This represents the appropriate self-labour rate. The photos provided as part of LL#7-LL#10 show significant amounts of dirt, sufficient to justify the amount of time claimed. He also claims \$1.73 in disposable gloves for cleaning, for which a receipt was provided (LL#27 page 3).
29. As stated above, the tenants had a duty in law to leave the premises in a clean state and failed to exercise that duty.

30. This portion of the landlord's claim succeeds in the amount of \$214.13.
31. The landlord claims \$209.43 for paint and \$802.40 in labour for painting, the latter of which represents the appropriate self-labour rate, as well as \$27.76 for disposable paint tools. A receipt was provided for the cost of paint as well as the disposable tools as part of LL#27 (pages 1, 2, and 4). The landlord testified that the painting was necessary due to staining on the walls caused by the tenants smoking in the premises and due to the mold. He testified that the tenants did tell him that there was an issue with humidity at one point and he supplied them with a dehumidifier, which he says they indicated was satisfactory. He says the tenants only told him about mold once, on 13-December-2023, via text messages. These messages can be seen in T#4, pages 4-5. He says the first tenant then took it upon herself to clean it with bleach. He testified that he attended shortly thereafter and inspected for mold and found none. He also testified to the effect that he told the tenants he has health concerns with them using bleach to treat mold and urged them to inform him so that he could do the repairs for them. He said he tells all tenants to not effect repairs themselves. He drew my attention to a text message sent 31-March-2024 shown on page 9 of T#5, where the second tenant says "I remember u said u rather not have ur tenants [sic] take matters in their own hands."
32. The tenants deny ever smoking inside the premises. They say also that the landlord was aware of the mold issue and never took any steps to remedy or address it.
33. Considering the evidence in its totality, I find on a balance of probabilities that the tenants caused damage to the walls by negligently failing to report the ongoing mold issue. While all evidence was considered, T#4 and T#5 deserve special mention. These documents were submitted by the tenants as records of text conversations between the tenants and the landlord. They corroborate the landlord's account completely. The first tenant states via text message on 13-December-2023 visible in T#4 page 4 that the mold is "all gone now," which concurs with the landlord's testimony that he found no mold when he inspected the premises shortly thereafter. No messages indicate that the tenants ever raised the issue of mold with the landlord again. Tenants have a duty to report issues so that they can be remedied before they become larger problems. Failing to exercise that duty is negligence.
34. Depreciation must be considered. Depreciation is factored in by dividing the remaining expected lifespan of the damaged item by the total expected lifespan of the item and multiplying it by the total cost of repair or replacement. This ensures that landlords are compensated for the actual loss. Otherwise, tenants who damage a given item would be compensating for the cost of a new item, putting the landlord in a better position than they would have been in had the damage not been done. Paint in a rental unit has a life expectancy of about five years. The paint appeared to be new when the tenants first moved in three years prior. The tenants would therefore be liable for 2/5ths the cost of the supplies and labour.
35. In this case, a special consideration is warranted. The landlord testified that the painting was unusually expensive because the time and materials used in repainting were also used to remediate the mold. Supporting the landlord's claim, Health Canada warns that

painting over mold is insufficient, and specific precautions and steps must be taken when restoring mold damaged areas.¹

36. Considering all the above factors, I judge that this portion of the landlord's claim succeeds in the amount of \$708.28.
37. In total, the landlord's claim for damages succeeds in the amount of \$1029.14.

Issue 2: Unpaid Rent

Landlord's Position

38. The landlord seeks the full monthly rent of \$925 for the month of June. He testified that he gave the tenant's six months notice to terminate the tenancy on 31-July-2024, which was when the fixed term agreement was set to end. He says they messaged him on 29-May-2024 that they found a new place and would be moving out for June. He testified that the tenants told him they encountered delays and did not vacate until 5-June-2024. He testified that they told him at that time they intended to return once more to clean the premises and collect the last few items but did not. He said he posted a notice of abandonment on 7-June-2024 and retook possession of the premises the next day. He testified that he was not able to look for new tenants until the end of June as the premises were not fit due to the tenant's actions in leaving the premises in an unclean and damaged state. He says he was able to place new tenants in the premises for the start of July 2024.

Tenant's Position

39. The tenants submit that they should pay only \$150 in rent for the five days of June they remained on the premises. They say they had a verbal agreement with the landlord that they would pay only for the days they were present at the property at a rate of \$30/day (the landlord denies this).

Analysis

40. S. 18(7) of the *Act* states that where a landlord gives a tenant notice that the rental agreement is terminated under subsection (2), the applicable notice period in subsection (1) continues to apply in respect of the tenant. In other words, a landlord providing notice of termination does not affect the requirement that a tenant provide sufficient notice should they choose to move out in advance of the termination date. A landlord may recover rent in lieu of sufficient notice subject to their duty to mitigate their losses by placing a new tenant as soon as possible.

¹ Health Canada. (2020, April 9). *Government of Canada*. Canada.ca.

<https://www.canada.ca/en/health-canada/services/publications/healthy-living/addressing-moisture-mould-your-home.html#a9>

41. In the present case, I am satisfied on a balance of probabilities that the landlord discharged their duty to mitigate by finding a new tenant as soon as possible. The landlord is entitled to the full rent for the month of June. I am not satisfied that the verbal agreement the tenants refer to existed. I note there is no reference to it in any of the text messages submitted.
42. The landlord's claim for unpaid rent succeeds in the amount of \$925.00.
43. S. 15(1) of the *Act* says 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 \$75.00. As the rent payment for June has been overdue for more than 35 days, the maximum late fee applies.
44. The total amount of rent owed and late fees is therefore \$1000.00.

Issue 3: Return of Possessions

45. Parties agree that the landlord currently has possession of a fan belonging to the tenants. The landlord did not contest that the tenants are entitled to have possession of the item and clarified that he wishes the tenants to contact him ahead of time to arrange a time and place to retrieve it. The tenants indicate they are uncomfortable attending the landlord's premises.
46. There is no actual dispute over the ownership of the item nor is there any evidence that the landlord has attempted to deprive the tenants of it. This tribunal declines to grant an order requiring that the landlord deliver the item to the tenants but affirms their ownership.

Issue 4: Refund of Rent

Tenant's Position

47. The tenants seek a refund of rent in the amount of \$200. This represents two months for which they say they were denied the use of the driveway which was part of the rental agreement. They point to multiple notices the landlord gave them requiring to move their vehicle from the driveway. They say the vehicle was at all times entirely within the confines of their side of the driveway.

Landlord's Position

48. The landlord characterizes the events differently. He says the vehicle was parked partially on the neighbour's half of the shared driveway, and the neighbour complained to him multiple times about this. Pictures were provided of the vehicle parked at an angle in the driveway (LL#20). He says he issued the notice to move the vehicle to placate the neighbour, and that subsequent notices were actually for the benefit of the tenant – extending the time period until the winter parking ban was over. He testifies there was one other time he asked the tenants to move the vehicle for less than a day so that he

could get a quote from a paving company. He says the only reason the vehicle couldn't be placed back immediately was because it was broken down and difficult to move.

Analysis

49. After considering the evidence in its totality I find on a balance of probabilities that the tenants were not denied the use of the driveway. The text message records in T#4 and T#5 are entirely consistent the landlord's account. Further, while the pictures of the vehicle are from a suboptimal angle, it does appear to be past the center line of the driveway.
50. The tenant's claim for a refund of rent fails.

Issue 5: Validity

Tenant's Position

51. The tenants' representative submitted that they were not taking issue with the termination notice by itself, but that the landlord's actions after the notice was issued constituted a harassment campaign designed to force the tenants to move out early.

Landlord's Position

52. The landlord submits that the termination notice was valid. He denies any harassment and suggested that the landlord-tenant relationship was generally a positive one.

Analysis

53. To be valid, a termination notice must comply with all relevant sections of the *Act*. A termination notice was provided as part of T#1 (page 7).
54. The termination notice is in writing in the form prescribed by the minister. It contains the names and address of the recipients. It identifies the residential premises which it regards. It identifies itself as being given under s. 18(2)(c) of the *Act*. It therefore complies with s. 34.
55. The termination notice was signed by the landlord who provided it. It was issued prior to the first day of the relevant rental period. It states the date on which the tenants are to vacate and the rental agreement is set to terminate, and that date is the last day of a rental period. It was served on the tenants electronically in accordance with s. 35(2)(f) of the *Act*. It therefore complies with s. 18(9) of the *Act*.
56. S. 18(2)(c) requires that a landlord's notice to terminate a fixed term rental agreement provide at least three full months' notice. In this case, the termination notice provided more than six months' notice.
57. The termination notice complies with all relevant sections of the *Act* and is therefore valid.

58. Having considered the evidence in its totality, I do not find on a balance of probabilities that the landlord intended to force the tenants to vacate early.

Issue 6: Security Deposit

59. The landlord is owed moneys and may therefore apply the security deposit against the sum owed. In this case, the security deposit was \$450.
60. S. 14(7) of the *Act* mandates that 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. For the relevant time period prior to 2024, the regulations prescribed an interest rate of 0%. For 2024, the regulations prescribe a cumulative simple interest rate of 1% annual. This results in a total amount of interest accrued of \$2.69 to the date of the hearing. The total of the security deposit plus interest is therefore \$452.69.

Decision

61. The landlord's claim for damages succeeds in the amount of \$1029.14.
62. The landlord's claim for unpaid rent succeeds in the amount of \$925.00.
63. The landlord shall return the fan to the tenants.
64. The tenant's claim for a refund of rent fails.
65. The termination notice dated 27-January-2024 is valid.
66. The landlord may apply the total security deposit and interest of \$452.69 against monies owed.
67. The landlord was successful in their claim and is therefore entitled to have their reasonable hearing expenses reimbursed. In the present case, the landlord's hearing expenses consisted solely of the \$20 application fee.

Summary of Decision

68. The termination notice dated 27-January-2024 is valid.
69. The landlord shall return the fan to the tenants.

70. The tenants shall pay to the landlord \$1596.45 as follows:

Damages.....	\$1029.14
Unpaid Rent and Late Fees.....	\$1000.00
Hearing Expenses.....	\$20.00
Less Security Deposit.....	-(\$452.69)
Total.....	\$1596.45

13-August-2024

Date


Seren Cahill
Residential Tenancies Office