

Residential Tenancies Tribunal

Decision 20-0157-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:05 am on 28 August 2020 via teleconference.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as “landlord1” and “landlord2”, respectively, participated in the hearing. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as “tenant1” and “tenant2”, also participated.

Issues before the Tribunal

3. The landlord is seeking the following:
 - a. An order for a payment of rent in the amount of \$700.00; and
 - b. Authorization to retain the \$525.00 security.

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this case are sections 20, 21 and 34 of the *Residential Tenancies Act, 2018*.

Issue 1: Rent - \$700.00

Relevant Submissions

The Landlords' Position

6. Landlord1 stated that they had entered to a verbal, 1-year, fixed-term lease with the tenants commencing 01 September 2019. The agreed rent was set at

\$700.00 per month and according to their application, the tenants had also paid a security deposit of \$525.00.

7. The landlord stated that in February 2020, the tenants made a complaint to them about mold in the rental unit. Landlord1 testified that they had taken several steps to deal with the complaint. She testified that she had purchased a moisture control system on 01 February 2020 for the tenants use and she also claimed that she had a mold remediation specialist visit the unit to inspect.
8. According to this specialist, the mold that was present in the tenants' unit was a household mold that is typically found in this region. In order to deal with it, the landlord stated that she was advised that the areas that are affected need to be wiped down and kept clean.
9. But landlord1 argued that it was the tenants who were responsible for the presence of mold in their unit. She claimed that they never did retrieve from them the moisture control system she had purchased and she also stated that they had turned off the air exchanger system in their apartment, preventing the air circulation. The issue with the air quality was also exacerbated by the fact that the tenants had an aquarium in their unit and they kept a pet dog. She also claimed that the tenants unit was unkempt and they did not clean the mold as it arose.
10. Landlord1 stated that on 17 February 2020 the tenants had informed them that they were terminating their agreement and they vacated at the end of the month. She testified that she had informed the tenants that their verbal termination notice did not meet the notice requirements set out in the *Residential Tenancies Act, 2018* and that they may be held liable for any lost rental income they would suffer if they could not put new tenants in place for March 2020.
11. Landlord1 submitted copies of Kijiji advertisements with her application showing that she had immediately started advertising the unit for rent on 17 February 2020 and her submitted text-message exchanges she had with the tenants showing that she had several viewings during the month of February 2020.
12. However, landlord1 stated that she did not get new tenants until April 2020. The rental unit sat vacant during March 2020 and landlord1 complained that she suffered a loss of income during that month as the tenants had not given her a proper notice that they were terminating their agreement.
13. The landlords are seeking an order for a payment of \$700.00 in compensation for their loss of rental income for March 2020.

The Tenants' Position

14. Tenant2 denied that they had agreed to a 1-year lease and he claimed that the tenancy was running on a month-to-month basis. He also claimed that he had

been speaking to landlord2 on the telephone on 15 or 16 February 2020 and had informed him then that he was moving out at the end of the month.

15. Tenant2 stated that he had no choice but to move out of the unit because of the mold that was present there. He denied that this mold was the result of having a dog or an aquarium in the apartment and he claimed that he had previously resided in other units with the dog and aquarium and never experienced this issue.
16. Tenant2 claimed that the mold in the apartment was contributing to his worsening asthma symptoms and was making it difficult for him to breath. In support of that claim, he read aloud a note he had received from his doctor in which he writes that there is significant mold in the apartment which is contributing to his breathing problems. He advises that tenant2 vacate because of these issues.
17. Tenant1 claimed that they were good tenants, that they always paid their rent on time and she claimed that they have good references from previous landlords. She argued that they were entitled to give a short notice because of the air quality issues and they cannot be held responsible for rent for March 2020.

Analysis

18. When it comes to rental agreements, the landlord has the burden of proving the terms of such an agreement. Landlord1 stated that their agreement was running for a fixed term, while tenant2 claimed that it was running on a month-to-month basis. As there was no other evidence to decide the matter, e.g., no signed, written agreement, I find that landlords have failed to discharge their burden and I therefore side with the tenants on this matter.
19. With respect to the issue of mold, I also find that there was insufficient evidence submitted at the hearing to establish the cause of the mold. As a short termination notice can only be issued where circumstances warrant, the burden of proving those circumstances lies with the party issuing the notice—in this case, the tenants.
20. However, I find that the tenants have submitted insufficient evidence to establish that the mold at the apartment was contributing to any of tenant2's health issues or to establish that the mold was caused by any defect in the rental unit or any failure on the part of the landlords to properly maintain the property.
21. The tenants did not submit into evidence any medical documentation and according to the landlords, no documentation was provided to them during this tenancy either.
22. Based on the evidence submitted at the hearing, it seems just as probable (i.e., 50% - 50%) that the tenants were responsible for the appearance of mold by not properly cleaning and by not properly allowing air to circulate in the unit.

23. Be that as it may, the landlords are also right to point out that they never did receive a proper termination notice from the tenants as required by the *Residential Tenancies Act, 2018*. If the tenants believed, for example, that the landlords had not been properly maintaining the unit in a good state of repair, they could have issued them a notice to rectify the situation, and if they failed to comply, they could have issued a 1-month termination notice under section 20 of the *Act* (notice where material term of agreement contravened). Or, if the tenants believe that the presence of mold had made the unit unfit for habitation, they could have issued an immediate termination notice under section 21 of the *Act* (notice where premises uninhabitable).
24. But for whatever reason a notice is issued, it must be in compliance with section 34 of the *Residential Tenancies Act, 2018*, which 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.*
25. The notice issued by the tenants meets none of these requirements and therefore was not valid.
26. As the tenants had not properly terminated their rental agreement, they are considered to have abandoned the unit (cf. s. 31.(2)) and the landlords are entitled to compensation for any damages which are caused as a result of that abandonment, including any loss of rental income, so long as the landlords took all reasonable steps to mitigate those damages.
27. I accept the landlords' claim that they had mitigated their damages by immediately advertising the unit for rent. I also accept their claim that despite those efforts, the unit remained vacant during March 2020 and the landlords suffered a loss of rental income for that month.
28. In cases where a tenancy is running on a month-to-month basis, as I found it is here, landlords are only able to claim compensation for loss rental income equivalent to 1 month's rent.
29. As such, their claim for rent for March 2020 succeeds.

Decision

30. The landlords' claim for a payment of rent succeeds in the amount of \$700.00.

Issue 2: Security Deposit

31. According to the landlords' application, the tenants had paid a security deposit of \$525.00 on 16 August 2019. As the landlords' claim has been successful, they shall retain that deposit as outlined in this decision and attached order.

Issue 3: Hearing Expenses

32. The landlords paid a fee of \$20.00 to file this application. As the landlord's claim has been successful, the tenants shall pay this hearing expense.

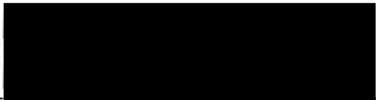
Summary of Decision

33. The landlords are entitled to the following:

- a) Rent Owing\$700.00
- b) Hearing Expenses.....\$20.00
- c) LESS: Security Deposit..... (\$525.00)
- d) Total Owing to Landlords\$195.00

29 October 2020

Date



John R. Cook
Residential Tenancies Tribunal