

Residential Tenancies Tribunal

Application [REDACTED]
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Decision 21-0037-02

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 1:37 p.m. on 16-December-2021.
2. The applicant, [REDACTED] hereinafter referred to as “the landlord” attended by teleconference.
3. The respondent, [REDACTED] hereinafter referred to as “the tenant” attended by teleconference
4. The landlord submitted an Authorized Representative (LL#01) form naming [REDACTED] as his representative, hereinafter referred to as “the authorized representative.” She also attended the teleconference.
5. The tenant called a witness, [REDACTED] hereinafter referred to as witness1.
6. The landlord called a witness, [REDACTED] hereinafter referred to as witness2.

Preliminary Matters

7. Both parties submitted an affidavit showing service of documents (LL#02 & TT#01). Both parties agreed that they received good service.
8. The tenant was seeking damages in the amount of \$2,000.00, however she was not prepared to break this down into an itemized list for assessment, so this issue was not considered.
9. The landlord and tenant agree that they entered a verbal rental agreement for \$525.00 per month, heat and light are included; the tenant is to pay the landlord for internet, t.v. and her phone as well. The rent is monthly from the 1st to the end of the month, with rent due on the 1st of the month. The tenant provided a rental agreement (TT#02) that she wrote up after the verbal agreement was reached. The agreement shows that the tenant began living there on 12-August-2021.

Issues before the Tribunal

10. The tenant is seeking:
 - Validity of termination

The landlord is seeking:

- Rent paid \$1,312.50
- Compensation for damages \$600.00
- Utilities paid \$67.15
- Late fees \$225.00
- Vacant possession of the rented premises

Legislation and Policy

11. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
12. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 15: Fee for failure to pay rent and Section 19: Notice where failure to pay rent.

Issue 1: Rent paid \$1,312.50

Landlord's Position

13. The landlord submitted a rent ledger stating that the tenant owes rent for half of August, September and October of 2020, totaling \$1,312.50.
14. The landlord agreed that he allowed her to stay there without rent for the first months while she was getting her funding in place.
15. The landlord said that he expected she was going to pay back those months once she had funding set up.
16. The authorized representative said that the rental agreement (TT#02) submitted by the tenant includes notes that were added after the agreement was signed.
17. The authorized representative said that all other months have been paid, she pointed out that the payments however are not made on the 1st of each month.

Tenant's Position

18. The tenant said that she doesn't owe rent for the first months. She said that she and the landlord had agreed when she moved here that she wouldn't be able to pay rent until her funding was in place. She agrees that she moved in on 12-August-2020.

19. The tenant provided a number of Facebook messages (TT#03) indicating that the landlord keeps asking her about the utilities owed but doesn't mention the rent owed. She said that the logical reason why he isn't asking about rent is because she doesn't owe rent.
20. The tenant also provided photos of her receipts (TT#04 & TT#05) for her rent from November 2020 until November 2021.
21. The tenant said that the initial plan was, once she moved here, the landlord was going to sell the cabin and then they were going to buy a property with two separate living units, in [REDACTED] and they would share the cost, this is also discussed in an email in her evidence (TT#10).
22. She believes the landlord wanted a romantic relationship and lured her here. The email thread she provided (TT#03) has the landlord asking for the rent and stating that he has no interest in a romantic relationship. Her response to this email is that this was not written by him and that someone else is writing his response for him.

Analysis

23. The question at hand is, what was the verbal agreement in relation to the first months that the tenant lived at the house? There is a clear agreement as to how much rent is per month but there is disagreement about whether or not the tenant is to pay rent from the start or not until she started receiving funding.
24. The initial plan, as stated by the tenant in paragraph 21 and her email submitted into evidence (TT#03), is that she was to move here, the landlord was going to sell the cabin and they were to buy a house with two separate living spaces. The plan of buying a place with two separate living spaces indicates that there was never a plan that they would live as a couple but instead, as two separate individuals who were cost sharing.
25. Based on the initial plan, as well as the rental agreement (TT#02) that states the cost of rent and the day the tenant took occupancy on 12-August-2021, I find that the landlord was expecting payment from the start of the tenant's occupancy. The landlord said that he was under the belief that, once she started receiving money, she would pay back the rent owed for the previous months.
26. As both parties do agree that rent per month is \$525.00 and both parties agree that the tenant did not pay any rent for half of August through to the end of October 2020; I find that the tenant does owe rent for these months.
27. As this board does not consider future rent, a daily rate of rent will be calculated for rent due in December up to the date of this hearing. \$525.00 per month x 12months = \$6,300.00. \$6,300.00 a year divided by 365 days = \$17.26 a day. \$17.26 A day x 16 days = \$276.16 for the 16 days in December.

28. The tenant has paid December rent in full and will receive credit for the additional days paid. $\$525.00 - 276.84 = \248.84 credit.
29. The tenant owes $\$1,312.50 - 248.84 = \$1,063.66$.

Decision

30. The landlord's claim for rent succeeds in the amount of \$1,063.66

Issue 2: Compensation for Damages \$600.00

Landlord's Position

31. The landlord submitted a list of damages (LL#05) he believes were caused by the tenant's cats. The damages are as follows:
 - Furniture in need of cleaning due to the cats urinating on the fabric \$100.00
 - Carpet in need of cleaning due to cats urinating and defecating on carpet \$150.00
 - Scratched molding around the front door \$100.00
 - Scratched couch \$250.00
32. The Authorized Representative said that the tenant's cats have done damage to the cabin as stated above. She provided pictures of the furniture showing cat scratches on the couches and chairs (LL#06, LL#07 & LI#08). As well as a picture of feces (LL#10) on the floor.
33. The Authorized Representative did not provide written estimates or receipts for the damages, she said they checked to see how much it would be to rent equipment to have the furniture and carpet cleaned.

Tenant's Position

34. The tenant said that she takes excellent care of her cats and was inconsolable that the landlord and authorized representative would say otherwise.
35. The tenant called her witness and he testified that he thought that she took excellent care of her pets and that he didn't notice any smell from the cats. He said he had been to the cabin twice to bring her supplies.
36. The tenant also said that the cats are very well trained and that they never poop on the floor.
37. The tenant questioned what carpet needed cleaning as the only carpet is in the bedrooms and the landlord has not been in her bedroom.

Analysis

38. Although the landlord provided pictures of the damages to the couch, there were no pictures of the molding and no receipts or estimates.
39. This board is unable to assess the cost of damage or repairs without receipts or estimates.

Decision

40. The landlord's claim for damages fails.

Issue 3: Utilities paid \$67.15

Landlord's position

41. The landlord submitted a ledger indicating that the tenant owes \$67.15 for October 2020.

Tenant's position

42. The tenant said she does not owe for utilities and that she has paid the utilities.
43. The tenant submitted a receipt (TT#04) dated February 4, 2021. The receipt includes 4 months internet from October 2020 – January 2021. The receipt is signed by the landlord.

Analysis

44. The tenant has provided a signed receipt for the utility payment in question. The landlord's claim fails.

Decision

45. The landlord's claim for utilities fails.

Issue 4: Late fees \$225.00

Landlord's Position

46. The authorized representative stated that the cost of late fees was based on \$75.00 a month for each of the 3 months that rent was not paid from August 2020 - October 2020.

Analysis

47. Section 15 of the *Residential Tenancies Act, 2018* states:

Fee for failure to pay rent

15. (1) 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 prescribed the following:

Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed:

- (a) \$5.00 for the first day the rent is in arrears, and***
- (b) \$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00.***

48. As per section 15. (1) (b) the late fee is for any consecutive number of rental payment periods to a maximum of \$75.00. Paragraph 26 shows the tenant is in rental arrears for August – October 2020. The landlord is entitled to the maximum amount of \$75.00.

Decision

49. The landlord's claim for late fees succeeds in the amount of \$75.00.

Issue 5: Validity of termination notice / Vacant Possession of property

Landlord's position

50. The landlord submitted the landlord's notice to terminate early – cause form for failure to pay rent (LL#11). The notice is dated and signed on October 06, 2021 with a termination date of October 17, 2021.

51. The authorized representative said that the landlord posted it on the tenant's door on the date signed.

Tenant's position

52. The tenant confirmed that the landlord posted the notice on her door on October 06, 2021.

Analysis

53. As per Section 19 of the Residential Tenancies Act, 2018,

Notice where failure to pay rent

19. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),

- (a) where the residential premises is rented from week to week and the amount of rent payable by a tenant is overdue for 3 days or more, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 3 days after the notice is served on the tenant; and
- (b) where the residential premises is
 - (i) rented from month to month,
 - (ii) rented for a fixed term, or
 - (iii) a site for a mobile home, and

the amount of rent payable by a tenant is overdue for 5 days or more, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 10 days after the notice is served on the tenant.

54. As per paragraph 26 the tenant does owe the landlord 2 and a half months rent. The rent was past due for more than 5 days and the notice meets the requirements of the Act. The notice is therefore valid and the tenant should have moved on or before October 17, 2021.

55. The landlord's claim for vacant possession succeeds.

Decision

56. The landlord's claim for an Order of Possession succeeds.

57. The tenant shall move immediately

58. The tenant shall also pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

Issue 6: Hearing expenses reimbursed

Relevant submissions

59. Both the landlord and the tenant submitted their expenses for the cost of filing this application.

60. The landlord's application cost \$26.04 (LL#12). The tenant's application cost \$20 (TT#07).

Decision

61. As the landlord's claim was successful the tenant shall incur the cost of his filing fee: \$26.04.

Summary of Decision

62. The landlord is entitled to:

• Rent	\$1,063.66
• Late fees.....	75.00
• Hearing expenses.....	<u>26.04</u>
○ Total.....	<u>\$1,164.70</u>

And an Order of Possession

The tenant shall:

- Vacate the premises immediately
- Pay the landlord \$1,164.70 for rent, late fees and hearing expenses.
- Pay to the landlord \$17.26 a day for rent beginning 17-December-2021 until such time as the landlord regains possession of their property
- Pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

December 22, 2021
Date

