

Residential Tenancies Tribunal

Application [REDACTED]
Application [REDACTED]

Decision 21-0039-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:05 AM on 03 May 2021 via teleconference.
2. The applicant, [REDACTED] trading as [REDACTED] [REDACTED] was represented at the hearing by [REDACTED] hereinafter referred to as "the landlord".
3. The respondent, [REDACTED] hereinafter referred to as "the tenant", also participated.

Issues before the Tribunal

4. The landlord is seeking the following:
 - An order for a payment of \$70.00 in compensation for inconvenience;
 - An order for a payment of utilities in the amount of \$133.50;
 - An order for a payment of "other" expenses totalling \$1720.00; and
 - Authorization to retain the \$425.00 security deposit.
5. The tenant is seeking the following:
 - A determination of the validity of her termination notice;
 - An order for a refund of the security deposit in the amount of \$425.00; and
 - An order for a payment of \$34.44 in compensation for inconvenience.

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.

7. Also relevant and considered in this case are sections 10 and 18 of the *Residential Tenancies Act, 2018*.

Issue 1: Validity of Notice

Relevant Submissions

8. The following facts are not to in dispute.
9. The landlord and the tenant entered into a 1-year, fixed-term lease, commencing on 01 June 2020. The agreed rent was set at \$850.00 per month. A copy of that lease was submitted with both applications (█ #1).
10. On 12 October 2020, the tenant sent an e-mail to the landlord informing her that, because she was going through a divorce, she could no longer afford her rent and she would be moving out of the rented premises on 01 December 2020. She vacated the unit on 30 November 2020.
11. The tenant is seeking a determination of the validity of the termination notice she sent to the landlord on 12 October 2020.

Analysis

12. Section 18.(1) of the *Residential Tenancies Act, 2018* states:

Notice of termination of rental agreement

18. (1) A tenant shall give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises

- (a) *not less than 7 days before the end of a rental period where the residential premises is rented from week to week;*
- (b) *not less than one month before the end of a rental period where the residential premises is rented from month to month; and*
- (c) *not less than 2 months before the end of the term where the residential premises is rented for a fixed term.*

13. As the tenant had entered into a lease which was not set to expire until 31 May 2021, she could not issue the landlord with a termination notice which specified a termination date any earlier than that date. For that reason, her notice is not valid.

Decision

14. The termination notice issued to the landlord on 12 October 2012 is not a valid notice.

Issue 2: Compensation for Inconvenience - \$34.44

Relevant Submissions

The Tenant's Position

15. The tenant stated that after she informed the landlord that she would be moving out of her unit on 01 December 2020, she was told that it was her responsibility to find a new tenant to move into the property.
16. The tenant testified that she immediately placed advertisements on Facebook and on 13 October 2020 she also put an advertisement on Kijiji. She stated that she was able to find someone who wanted to move in on 01 December 2020 and she put her in contact with the landlord. Although that prospective tenant did pay a security deposit to the landlord, her rental application was eventually rejected, and the security deposit was returned. Although the landlord claimed that that application was rejected because the applicant had pets, the tenant stated that she did not in fact have pets, but rather her boyfriend, who would not be residing there, had pets.
17. After that prospective renter was rejected by the landlord, the tenant placed another advertisement on Kijiji on 18 November 2020. She testified that she was again able to find 2 more prospective renters and she again put them in contact with the landlord. The tenant stated that these applications were also rejected by the landlord and that the landlord had not even bothered to contact their references.
18. The tenant submitted receipts with her application (████#2, #3) showing that she was charged \$34.44 for each advertisement she had placed on Kijiji. She conceded that she was responsible for the costs of advertising as she had broken her lease, but she argued that the landlord is responsible for the costs of the second advertisement because they had unreasonably refused the first prospective renter she had brought to them.

The Landlord's Position

19. The landlord acknowledged that she had turned away the first prospective renter, and she insisted it was because that person had pets.

20. She also stated that the tenant had only provided her with one other potential renter, not two, and that application was rejected because no references were provided.

Analysis

21. The tenant acknowledges that she is responsible for the costs of advertising her unit as she was prematurely terminating her lease agreement. I agree with her on that point.
22. The question is whether she had incurred any extra costs as the landlord had unreasonably refused the first prospective renter. The tenant claims that that person did not have pets, while the landlord claims that she did. Besides their conflicting testimony, no other evidence was presented at the hearing, by either party, which would allow me to make a determination on that matter.
23. As the tenant has the burden proving her claim, on the balance of probabilities, I have to conclude that she has failed to meet that burden.

Decision

24. The tenant's claim for compensation for inconvenience does not succeed.

Issue 3: "Other" Expenses - \$1720.00

Relevant Submissions

The Landlord's Position

25. The landlord initially stated that after she was informed by the tenant that she was moving on 01 December 2020, she immediately started to advertise the unit for rent. Later in the hearing, she changed that account and stated that advertisements were only placed after it was evident that the tenant was unable to find someone to take over her lease. The landlord testified that someone else at her property management company deals with advertising and she not give any first-hand account of the dates the advertisements were placed.
26. The landlord testified that advertisements were placed on her property management website, on NL Classifieds, on Kijiji and on Facebook Marketplace. No copies of those advertisements were submitted at the hearing.
27. The landlord claimed that she was unable to secure a new tenant until 01 May 2021 and the unit sat vacant from 01 December 2020 to that date, and she collected no rent during those 6 months.

28. The landlord is seeking a payment of \$1700.00 for the loss of rental income she suffered for the months of December 2020 and January 2021.

The Tenant's Position

29. The tenant stated that the landlord carried out no advertising during October and November 2020 and she stated that they had refused to help her find someone to take over her lease. She testified that she had been monitoring the rental advertisement sites the landlord mentioned, and no advertisements were placed for her rental unit by the landlord.
30. With respect to the landlord's property management website, she claimed that no advertisement was placed until 18 February 2021, 4 months after she had informed them that she was moving out.

Analysis

31. As the tenant had not terminated her rental agreement in accordance with the *Residential Tenancies Act, 2018*, she is considered to have abandoned her unit and she is liable for any damages suffered by the landlord, including any loss of rental income, caused by that abandonment.
32. However, statutory condition 4, set out in section 10 of the *Residential Tenancies Act, 2018*, states:

Statutory conditions

10. (1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:

...

4. Mitigation on Abandonment - Where the tenant abandons the residential premises, the landlord shall mitigate damages that may be caused by the abandonment to the extent that a party to a contract is required by law to mitigate damages.

33. I found the testimony of the tenant to be credible and believable in this matter. It was her testimony that the landlord had informed her that she was responsible for finding a new tenant and I find it probable that the reason she had placed advertisements on Kijiji and Facebook was because she was so informed.
34. No evidence was presented by the landlord to establish that she had been advertising the unit during those 2 months, and the landlord even stated at the

hearing that she only started to advertise after it became apparent that the tenant would not find someone by 01 December 2020. But no evidence was submitted showing what efforts she had made to secure a new renter after the tenant moved out, either.

35. I also accept the tenant's claim that she had provided the landlord with 2 other prospective renters after the first one was rejected because she apparently had pets. It was her testimony that they were rejected even though their references were not checked.
36. Based on the foregoing, I find that the landlord had not taken all reasonable steps to mitigate her damages, as required by statutory condition 4. As such, her claim for compensation for lost rental income does not succeed.

Decision

37. The landlord's claim for lost rental income does not succeed.

Issue 4: Utilities - \$133.50

Issue 5: Compensation for Inconvenience - \$70.00

Relevant Submissions

38. The landlord stated that after the tenant moved out, the electricity account was placed back into the homeowner's name. She submitted a bill with her application (████#1) showing that the homeowner was charged \$133.50 for the period from 01 December 2020 to 05 January 2021.
39. The landlord is also claiming \$70.00 to compensate her leasing agent for her work in listing and showing the rental unit.

Analysis and Decision

40. For the reasons outlined in the previous section, these claims also do not succeed.

Issue 6: Security Deposit

41. The tenant paid a security deposit of \$425.00 to the landlord on 17 April 2020 and she submitted a copy of a receipt of that payment with her application (████#4). As the landlord's claims for rent, utilities and inconvenience have failed, she shall return the full amount of that deposit to the tenant.

Summary of Decision

42. The tenant is entitled to the following:

a) Refund of Security Deposit\$425.00

13 October 2021

Date

