

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0296-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:03 AM on 23 November 2021 via teleconference.
2. The applicants, [REDACTED] hereinafter referred to as "landlord1" and "landlord2", both participated in the hearing.
3. The respondent, [REDACTED] hereinafter referred to as "the tenant", was also in attendance

Issues before the Tribunal

4. The landlord is seeking the following:
 - A determination of the validity of a termination notice,
 - An order for a payment of \$120.00 in compensation for damages,
 - An order for a payment of rent in the amount of \$700.00, and
 - Authorization to retain the \$300.00 security deposit.

Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
6. Also relevant and considered in this decision is section 18 of the Residential Tenancies Act, 2018 and policy 9-3: Claims for Damage to Rental Premises.

Issue 1: Validity of Notice

Issue 2: Rent - \$700.00

Relevant Submissions

The Landlord's Position

7. Landlord2 stated that they had entered into 1-year, fixed-term lease with the tenant, commencing 01 October 2019. That lease was renewed the following year and a copy of that agreement was submitted with the landlord's application [REDACTED] #1). The agreed rent was set at \$700.00 per month and it is acknowledged in the lease that the tenant had paid a security deposit of \$300.00.
8. On 02 May 2021 there was a flood at the rental unit and the tenant moved out of the property while renovations were being carried out. The landlords returned May's rent to the tenant and they did not require that she pay the rent for June 2021. Landlord2 stated that they had an agreement with the tenant that she would move back into the unit on 01 July 2021
9. On 20 June 2021, the tenant sent a text-message to the landlords informing them that she had been accepted into a school in [REDACTED] and that she would not be moving back into the unit. On 21 June 2021, landlord2 stated that she started to advertise the unit for rent and on 25 June 2021, she secured a new tenant for August 2021.
10. During the month of July 2021, however, the unit sat vacant and the landlords suffered a loss of 1-month's rent during that month. The landlords pointed out that this lease was not set to expire until 30 September 2021 and they argued that the tenant is responsible for the rent for July 2021 as she had not properly terminated their agreement.
11. The landlord's are seeking an order for a payment of \$700.00 for July 2021.

The Tenant's Position

12. The tenant acknowledged that she had sent that text-message to the landlords informing them that she would not be moving back into the property.
13. However, the tenant claimed that, after the flood had occurred, she had not entered into any agreement with the landlords on the date that she would be moving back into the unit. She testified that she was at the unit on 19 June 2021 and there was still construction taking place at that time and there was a lot of noise there as a result of the renovations. She stated that because of those renovations, the unit was not ready for occupancy for 01 July 2021, and she claimed that one of the construction workers carrying out the renovations had informed her that the unit was not fit to move into.

Analysis

14. With respect to the notice that the tenant had sent to the landlords on 20 June 2021, I agree with the landlords that that notice is not valid. As this lease was not set to expire until 30 September 2021, that was the earliest date the tenant could have terminated her agreement.
15. But was there an agreement that the tenant would move back into the unit on 01 July 2021? The landlords claimed that there was such an agreement, while that claim was denied by tenant. No corroborating evidence was presented at the hearing that could help me decide which version of events was more likely.
16. Was the unit ready for occupancy on 01 July 2021? The landlords claimed that at the end of June 2021, when the tenant visited the unit, the renovations were almost complete and that as of 01 July 2021, the only renovations that remained were to be carried out in the upstairs unit, and not in the tenant's basement apartment. The tenant stated that the unit was not ready for occupancy in late June 2021, that it would have not been ready for 01 July 2021, and she argued that the renovations required for the upstairs portion of the property would also have rendered occupancy in her unit untenable. Besides the testimony of the parties, no other evidence was presented at the hearing that would corroborate these versions of events.
17. As the burden of proof lies with the applicant to establish that their version of events is more probable, I have to conclude that the landlords had failed to meet that burden, and that they have not presented enough evidence to the Board to establish that there was an agreement that the tenant would move back in on 01 July 2021, or indeed that it was ready for occupancy on that date.
18. As the landlords have failed to establish that there was such an agreement or that the unit was ready for occupancy, I find that their claim for compensation for lost rent for the month of July 2021 does not succeed.

Decision

19. The termination notice issued to the landlords on 20 June 2021 is not a valid notice.
20. The landlords' claim for a payment of rent does not succeed.

Issue 3: Compensation for Damages - \$120.00

Relevant Submissions

The Landlord's Position

21. With their application, the landlords submitted the following breakdown of the costs that they had incurred to carry out some cleaning at the property [REDACTED] #3):

• Clogged sink trap	\$40.00
• Clean oven and stove	\$40.00
• Clean dishwasher.....	\$40.00
Total.....	<u>\$120.00</u>

22. Landlord1 stated that the sink was clogged with hair and some other wax-like substance after the tenant moved out. He testified that it took him about an hour to clear that blockage. No photographs were submitted with their application.

23. Landlord1 stated that although there was an attempt to clean the oven, it was not completely clean before the tenant vacated and he submitted photographs showing the inside of the oven to substantiate that claim [REDACTED] #4). He also complained that the stovetop as not completely cleaned. Landlord2 stated that it took about 1.5 hours to clean the oven and stovetop.

24. Landlord2 also stated that the filter in the dishwasher had not been cleaned before the tenant moved out and the landlords had submitted 3 photographs with their application showing that filter. Landlord2 stated that it took about 30 minutes to clean that filter.

The Tenant's Position

25. The tenant argued that there was no evidence submitted to support the landlords' claim that the sink was clogged, and she stated that even if it was, there was no evidence presented to establish that she was responsible. She stated that the apartment was "a disaster" after the flood and she only had 3 hours to get all of her possession out of the unit. She also pointed out that renovations were taking place at the unit for over 2 months and that the sink could have become clogged during that period.

26. The tenant claimed that the oven had been cleaned before she vacated and she challenged the landlords' claim that it took them 1.5 hours to clean the oven after she vacated.

27. She also claimed that she had cleaned the dishwasher before she vacated, and she argued that, based on the landlords' photographs, it ought not to have taken 30 minutes to clean the filter.

Analysis

28. Under Section 10.(1)2. of the *Residential Tenancies Act, 2018* the tenant is responsible to keep the premises clean and to repair any damage caused by a willful or negligent act.

2. Obligation of the Tenant - The tenant shall keep the residential premises clean, and shall repair damage caused by a wilful or negligent act of the tenant or of a person whom the tenant permits on the residential premises.

Accordingly, in any damage claim, the applicant is required to show:

- That the damage exists;
- That the respondent is responsible for the damage, through a willful or negligent act;
- The value to repair or replace the damaged item(s)

In accordance with Residential Tenancies policy 9-3, the adjudicator must consider depreciation when determining the value of damaged property. Life expectancy of property is covered in Residential tenancies policy 9-6.

Under Section 47 of the Act, the director has the authority to require the tenant to compensate the landlord for loss suffered or expense incurred as a result of a contravention or breach of the Act or the rental agreement.

Order of director

47. (1) After hearing an application the director may make an order

- (a) determining the rights and obligations of a landlord and tenant;***
- (b) directing the payment or repayment of money from a landlord to a tenant or from a tenant to a landlord;***
- (c) requiring a landlord or tenant who has contravened an obligation of a rental agreement to comply with or perform the obligation;***
- (d) requiring a landlord to compensate a tenant or a tenant to compensate a landlord for loss suffered or expense incurred as a result of a contravention of this Act or the rental agreement***

29. No corroborating evidence was presented by the landlord to establish that a sink was clogged, and that claim therefore does not succeed.
30. The oven was not perfectly cleaned before the tenant moved out and there is some food on the filter for the dishwasher. No corroborating evidence was submitted showing that the stovetop required cleaning. I find that the landlords are entitled to compensation for 1 hour of their labour to clean the oven and the filter. Policy with this Section is that an applicant may claim up \$21.20 per hour for their personal labour.

Decision

31. The landlord's claim for compensation for damages succeeds in the amount of \$13.20.

Issue 4: Security Deposit

32. The tenant paid a security deposit of \$300.00 on 01 October 2019, and receipt of that deposit is acknowledged in the submitted rental agreement. As the landlord's claim has been partly successful, they shall retain that portion of the deposit to cover the damages, and the remainder shall be returned to the tenant as outlined in this decision and attached order.

Summary of Decision

33. The termination notice issued to the landlords on 20 June 2021 is not a valid notice.

34. The tenant is entitled to the following:

a) Refund of Security Deposit \$300.00

b) LESS: Compensation for Damages (\$21.20)

c) Total Owing to Tenant..... \$278.80

14 June 2022

Date

