

Residential Tenancies Tribunal

Application [REDACTED]
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Decision 21-0368-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:00 AM on 18 November 2021 via teleconference.
2. The applicant, [REDACTED] hereinafter referred to as "the tenant", participated in the hearing.
3. The respondent, [REDACTED] was represented at the hearing by [REDACTED] hereinafter referred to as "the landlord".

Issues before the Tribunal

4. The tenant is seeking an order for refund of the security in the amount of \$425.00.
5. The landlord is seeking the following:
 - An order for a payment of rent in the amount of \$425.00, and
 - An order for a payment of utilities in the amount of \$44.70.

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 23 of the *Residential Tenancies Act, 2018*.

Issue 1: Rent - \$425.00

Relevant Submissions

The Tenant's Position

8. The tenant stated that she had entered into a 1-year, fixed-term rental agreement with the landlord, commencing 01 April 2021, and a copy of that executed lease was submitted with her application [REDACTED] #1). The agreed rent was set at \$850.00 per month and it is acknowledged in the lease that the tenant had paid a security deposit of \$425.00.
9. The tenant stated that after she had moved into the unit she discovered that there were several deficiencies at the unit—these included a rodent problem, a leaking ceiling and an old and soiled carpet. With her application, the tenant submitted copies of her e-mail and text-message exchanges she had had with the landlord [REDACTED] #2) in which she requested that these matters be addressed.
10. The tenant stated that the landlord had responded to her requests for repairs by sending his maintenance worker, Matt, to the unit to carry out the repairs. However, the tenant claimed that although the landlord was addressing her concerns, he had not given her the proper 24 hour notice that his maintenance worker would be visiting her unit. She claimed that this happened on 3 different occasions and she pointed to her text-message exchanges with the landlord to substantiate her claims
11. The tenant stated that the first incident occurred on 22 April 2021 and this was the text-message exchange she had with the landlord on that day:

Tenant: [REDACTED] just sumthin I wanted to bring to someone's attention as I found some water and cold draft in the porch and I think it's due to the gap at the bottom of the door. May not be an issue for me over the summer months now (except for days with heavy rain/wind), but definitely something that would need to be fixed up by winter, I'd think. (:

Landlord: [REDACTED] is coming there today I think? I'll get him to replace that sweep

Tenant: I did not know that lol

Landlord: Ok maybe not today. Has he spiked to you about replacing the drywall?
Spoke ?

Tenant: Nope. Not since he was there replacing the carpet. Said it would have to be after the next big rainfall and he'd be in touch.

Landlord: Ok he's gonna be in touch with you shortly lol my apologies.
We had that scheduled for today.

12. The tenant stated that [REDACTED] also arrived at her unit on 28 April 2021, without any prior notice from the landlord. To substantiate that claim she pointed to the following text message:

Tenant: Hi [REDACTED] was by this morning regarding the leak and I also let him know that the only heater in the middle room, my office, doesn't work and it's very chilly here. He's going to look at that for me tomorrow.

...
I'm also losing a lot of heat from the porch. It's bitter out here and I can stick my finger outside from the bottom of the door. Hopefully [REDACTED] can do something to help with that as well.

Landlord: He was suppose to replace that
I'll remind him
Sorry for the late reply. I have been driving all morning just back to town

Tenant: No problem

Landlord: He's gonna replace that tomorrow when he comes to look at the heater

Tenant: Thanks

Landlord: Your welcome

13. The third incident concerned the landlord's attempts to deal with the rodent issue. The tenant stated that the landlord had hired a pest control company to treat the unit, and the landlord had been in contact with her to discuss some possible dates for that company to come by the unit. The tenant stated that no date was settled on, but, on 31 May 2021, while she was out of town, the landlord had entered her unit with that company to carry out the treatment. This was the exchange that they had:

Thu, May 27

Landlord: [REDACTED] Monday may 31st @ noon Orkin will be there.
Will you be home then?

Tenant: I won't, actually. I'm out of town until Thursday afternoon.

Landlord: Ok

I'll have to meet him there or do you want me to reschedule?

Sat, May 29

Tenant: I'll be able to meet him either Wednesday, Thursday or Friday.

Mon, May 31

Landlord: [REDACTED] is it ok if I meet orkin at the unit today still

Tenant: Does Wednesday, Thursday or Friday work?

Tue, Jun 1

Tenant: [REDACTED] just getting back to town. I noticed a black box near the patio entrance. Just wondered if any traps were placed inside. Took a quick glance and didn't see anything, but wanted to make sure with the dog.

Landlord: Yes sorry, they were scheduled for yesterday. By that time it was too late to cancel them. I'll check with [REDACTED] in if / there were any places inside

14. The tenant argued that because of those 3 entries into her unit, the landlord had infringed on her right to reasonable privacy and she also claimed that because of the ongoing repairs that were taking place at her unit and the manner in which the landlord's maintenance worker would show up to her unit, unannounced, she claimed that she could not enjoy her property and she did not expect that her privacy would be respected in the future.
15. Accordingly, on 14 June 2021, the tenant served the landlord with a termination notice, and a copy of that notice was submitted with her application [REDACTED] #3). That notice was issued under section 23 of the *Residential Tenancies Act, 2018*, and it had an effective termination date of 28 June 2021. The tenant stated that she had vacated the unit on 27 June 2021.

The Landlord's Position

16. The landlord argued that the termination notice the tenant had given him was not valid and he denied that he had interfered with the tenant's privacy or her peaceful enjoyment.
17. The landlord claimed that in the 3 instances identified by the tenant, he had given her notice that [REDACTED] would be visiting the rental unit to address the issues that she had been complaining about. He also claimed that [REDACTED] was given the tenant's telephone number and he had been in constant communication with the tenant and he also would inform her when he was visiting the property.

18. The landlord acknowledged that there were some maintenance issues at the unit that needed addressing, but he pointed out that he immediately responded to the tenant's requests for repairs. He testified that he had replaced the carpet as requested, that the roof was repaired to stop the leaking and he had hired a pest control company to deal with the rodents.
19. And with respect to the visit by the pest control company, the landlord claimed that he had given the tenant a 24 hour notice that they would be visiting on 31 May 2021. He stated that the tenant had informed him that she was going to be out of town on that date, but he claimed that he did not take that to mean that he could not enter the property on that date.
20. The landlord claimed that because the tenant had broken her lease, and because she had moved out on just 2 weeks notice, he was not able to get a new tenant for July 2021, and he only found new tenants for August 2021. The landlord state that the rental unit say vacant during the month of July 2021 and he suffered a loss of rental income for that month. He is seeking a payment of a half month's rent, \$425.00, in lieu of proper notice.

Analysis

21. Statutory conditions 5 and 7(b), set out in section 10 of the *Residential Tenancies Act, 2018*, state:

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:

...

5. Entry of Residential Premises - Except in the case of an emergency, the landlord shall not enter the residential premises without the consent of the tenant unless

- (a) notice of termination of the rental agreement has been given and the entry is at a reasonable time for the purpose of showing the residential premises to a prospective tenant or purchaser and a reasonable effort has been made to give the tenant at least 4 hours' notice;***
- (b) the entry is made at a reasonable time and written notice of the time of the entry has been given to the tenant at least 24 hours in advance of the entry; or***

(c) the tenant has abandoned the residential premises under section 31.

...

7. Peaceful Enjoyment and Reasonable Privacy -

...

(b) The landlord shall not unreasonably interfere with the tenant's reasonable privacy and peaceful enjoyment of the residential premises, a common area or the property of which they form a part.

and according to section 23 of this Act:

Notice where landlord contravenes peaceful enjoyment and reasonable privacy

23. (1) Notwithstanding subsection 18(1) and paragraph 18(3)(a), where a landlord contravenes statutory condition 7(b) set out in subsection 10(1), the tenant may give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises on a specified date not less than 5 days, but not more than 14 days, after the notice has been served.

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

(a) be signed by the tenant;

(b) state the date on which the rental agreement terminates and the tenant intends to vacate the residential premises; and

(c) be served in accordance with section 35.

22. Entering residential premises without the consent of the tenant or without first providing her with a written notice, as stated in statutory condition 5, quoted above, is a clear breach of a tenant's right to reasonable privacy and where such a breach occurs, a tenant may terminate her agreement under section 23 of the Act. I must be borne in mind though, that a landlord does not need the consent of the tenant to enter her unit, so long as he has given her a 24 hour notice, and he does not need to give notice if the tenant consents to the entry.
23. With respect to the 2 visits that [REDACTED] made to the tenant's unit on 22 April and 28 April 2021, though, I was not persuaded that any breach occurred. I accept the tenant's claim that the landlord had not given her a written, 24 hour notice of entry, but I was not provided with any evidence to establish that [REDACTED] had entered

her unit without her consent. In those 2 cases, rather, in response to the tenant's complaints about maintenance issues, [REDACTED] did drop by the apartment and was granted entry by the tenant. As he entered with her consent, no breach occurred.

24. Regarding the entry of the property on 31 May 2021 to deal with the rodent issue, I agree with the tenant that she had not consented to the landlord entering on that date. But I also agree with the landlord that on 27 May 2021 he had informed her, by text-message, that the pest control company would be by on 31 May 2021. And although the tenant did indicate that she would be out of town on that day, she did not immediately respond to the landlord's query as to whether she wanted him to reschedule the visit, and I accept the landlord's claim that he did not take this to mean that he could not enter on 31 May 2021 while she was out of town. And even if he did take it to mean that, that doesn't matter—a landlord does not need the consent of a tenant to enter her unit (so long as notice has been given).
25. Accordingly, I find that the landlord had not interfered with the tenant's right to reasonable privacy in the manner in which he was addressing the maintenance issues she wanted addressed. As such, I therefore also find that the tenant was not in a position, on 14 June 2021, to issue the landlord a termination notice under section 23 of the Act, and that notice is therefore invalid.
26. I accept the landlord's claim that the earliest he was able to secure a new tenant was 01 August 2021 and that he had suffered a loss of income for July 2021. As that loss was caused by the tenant breaking her lease and moving out of the apartment without proper notice, I find that the landlord is entitled to the half month's rent he has claimed here.

Decision

27. The landlord's claim for a payment of rent succeeds in the amount of \$425.00.

Issue 2: Utilities - \$44.70

Relevant Submissions

The Landlord's Position

28. The tenant was responsible for paying for her own electrical utilities during this tenancy, and when she vacated the unit on 27 June 2021 the tenant cancelled her account. The landlord stated that the owner of the home was charged for the electricity for the month of July 2021, while the unit sat vacant, and he submitted a bill [REDACTED] #1) showing that he was charged \$44.70 for the period from 27 June to 23 July 2021.

29. The landlord argued that the homeowner would not have incurred those charges had the tenant not broken her lease, and he is seeking an order for a reimbursement of that amount.

Analysis

30. I accept the landlord's claim that the homeowner was charged \$44.70 for the electrical utilities for July 2021. For the same reasons I outlined in the previous section, I find that the landlord is entitled to a payment of that amount.

Decision

31. The landlord's claim for a payment of utilities succeeds in the amount of \$44.70.

Issue 3: Security Deposit - \$425.00

32. The tenant paid a security deposit of \$425.00 on 26 March 2021 and receipt of that deposit is acknowledged in the submitted rental agreement. As the landlord's claim has been successful, he shall retain that deposit as outlined in this decision and attached order.

Issue 4: Hearing Expenses

33. The landlord paid a fee of \$20.00 to file his application. As the landlord's claim has been successful, the tenant shall pay that hearing expense.

Summary of Decision

34. The landlord is entitled to the following:

a) Rent	\$425.00
b) Utilities	\$44.70
c) Hearing Expenses.....	\$20.00
d) LESS: Security Deposit..... (\$425.00)	
e) Total	<u>\$64.70</u>

03 June 2022

Date

