

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0437-05

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:17 a.m. on 17-March-2022.
2. The applicants, [REDACTED] hereinafter referred to as "landlord1 and landlord2" attended by teleconference.
3. The respondent, [REDACTED] hereinafter referred to as "the tenant" attended by teleconference.

Preliminary Matters

4. The landlords submitted an affidavit (LL#01) stating that they served the tenant by email on 06-March-2022 and 07-March-2022; the tenant agreed to waive her service and proceed with the hearing.

Issues before the Tribunal

5. The landlords are seeking:
 - Rent \$1,790.00
 - Security deposit applied against monies owed

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 decision are the following sections of the *Residential Tenancies Act, 2018*: Section 14: Security deposit and Section 18: Notice of termination of rental agreement.

Issue 1: Rent \$1,790.00

Landlords' Position

8. The landlords submitted the rental agreements (LL#02) held with the tenant. Landlord1 stated that the tenant moved in on 01-July-2019; at that time she signed a term rental agreement until 01-July-2020. The next year on 01-July-2020 they signed another term agreement until 30-June-2021.
9. Landlord1 said that the rental agreements terms are: rent \$895.00 per month, with utilities included, the rental period is from the 1st day of the month to the last. Rent is due on the 1st day of the month. The tenant paid a security deposit on 02-June-2019 of \$450.00; the landlords are still in possession of the deposit.
10. Landlord1 said that on 24-January-2021 the tenant sent a text (LL#04) stating that she was moving out. Landlord1 said the tenant apologized for giving no notice and offered for them to keep the security deposit for their loss of rent. The tenant then told them on 28-January-2021 that she had moved and they regained possession of the apartment.
11. Landlord1 said that they had to do some cleaning in order to prepare the apartment for new renters.
12. Landlord2 said he advertised the apartment on Kijiji on 26-January-2021 and that he showed the apartment between 20-30 times. In April, their new tenant viewed the apartment and took occupancy on 01-May-2021.
13. Landlord1 said that the tenant should have given two months' notice, as per the rental agreement. She said that the tenant had offered to pay for her notice period, however, they were unable to reach an agreement for the payment of the notice.

Tenant's Position

14. The tenant agrees with the rental agreement terms as identified by landlord1.
15. The tenant said that she did send notice as outlined in paragraph 10 and agreed that the landlords could retain her security deposit towards the loss of rent. She said she had lost her job and was struggling with her own personal issues at the time she gave notice. She said a family member offered her a place to stay and because she knew that she was unable to pay rent, she thought the best thing for herself and the landlords, was to give her notice and move.
16. The tenant said she has made an offer to pay \$25.00 a month until the debt is paid, she indicated that the landlords didn't respond to the offer.

Analysis

17. The rental agreement is on a standard rental form. The clause for notice follows Section 18 of the *Residential Tenancies Act, 2018*, see below:

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.**

18. As per the *Act*, the tenant is not able to give 2 months' notice and terminate their rental agreement, she is in fact bound to the rental agreement until the end of the term, unless there is cause for termination; which there is not in this case.
19. However, as per the *Act*, the landlord and tenant may agree to terminate an agreement, see below. As there is no disagreement, and the tenant does accept that she has a responsibility to the landlords, they are able to agree to a two month notice period. The tenant can therefore move and provide rent in lieu of notice.

Notice of termination of rental agreement

18.(5) Notwithstanding subsections (1) to (3), a notice of termination is not required to be given where a landlord and a tenant agree in writing to terminate the rental agreement on a specific date.

Decision

20. The landlords' claim for rent succeeds in the amount of \$1,790.00

Issue 2: Security deposit applied to monies owed \$450.00

Landlords' Position

21. As per paragraph 9, the landlords have declared that, the tenant paid a security deposit of \$450.00; they are still in possession of that deposit. They are requesting to retain that security deposit towards monies owed by the tenant for rent, as offered by the tenant.

Tenant's Position

22. The tenant agrees to the retention of the security deposit towards the rent as per paragraph 15.

Analysis

23. The landlord's claim to retain the security deposit towards rent, as agreed by the tenant, succeeds as per Section 14 of the *Residential Tenancies Act, 2018*, see below:

Security deposit

14. (10) Where a landlord believes he or she has a claim for all or part of the security deposit,

(a) the landlord and tenant may enter into a written agreement on the disposition of the security deposit; or

(b) the landlord or the tenant may apply to the director under section 42 to determine the disposition of the security deposit.

Decision

23. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$450.00.

Summary of Decision

24. The tenant shall pay the landlords \$1,340.00 for rent as follows:

- Rent \$1,790.00
- Less security deposit (\$450.00)
- Total \$1,340.00

The landlords shall retain the \$450.00 security deposit.

March 18, 2022

Date

