

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0475-05

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:17 a.m. on 02-February-2022.
2. The applicant, [REDACTED] hereinafter referred to as “the landlord” attended by teleconference.
3. The respondent, [REDACTED] hereinafter referred to as “the tenant” did not attend.

Preliminary Matters

4. The tenant was not present or represented at the hearing and I was unable to reach him by telephone at the start of the hearing. This Tribunal’s policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, where the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent’s absence so long as he has been properly served. The landlord submitted an affidavit (LL#01) with his application stating that he had served the tenant with notice of the hearing, by email on 14-January-2022. The landlord stated that the tenant gave him his email address and it was the address used to make the rent and security deposit payment. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in his absence.

Issues before the Tribunal

5. The landlord is seeking:
 - Rent \$800.00
 - Compensation paid in damages \$600.00
 - Utilities \$62.50

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 9: Landlord tenant relationship, Section 10: Statutory conditions, Section 14: Security deposit, Section 18: Notice of termination of rental agreement, and Section 21: Notice where premises Uninhabitable.

Issue 1: Rent \$800.00

Relevant Submissions

8. The landlord stated that the tenant took occupancy on 26-June-2021. They had a verbal agreement that the tenant would pay \$800.00 rent; utilities are not included. The rental period is from the 1st day of the month to the last day. Rent is due on the 1st. The tenant paid a \$400.00 security deposit. The tenant had made these payments on 25-June-2021 (LL#02). The tenant's term was to begin on 01-July-2021, the landlord consented to the tenant moving his belongings in early.
9. The landlord said that the tenant told him that he wanted to move in early because he was expecting his 9 year old son and he wanted the apartment set up before he arrived.
10. After moving into the apartment, the tenant told the landlord that he could smell mold in the bathroom. He believed that the landlord had known that there was mold and he determined that he would not be renting the apartment. He then moved out on 29-June-2021. He told the landlord that his son has asthma and that he wouldn't be living there.
11. The landlord immediately contacted [REDACTED] and they came to the apartment to check out the bathroom on 01-July-2021. They took out the toilet and removed the drywall, they found some minimal surface mold, and the contractor said that this is common in older washrooms where there isn't mold resistant gypsum. Once he removed the bathtub he found that the smell was coming from two newly decaying rodents.
12. The landlord immediately contacted the tenant by text to ask was it okay for the contractor to proceed with the work, or did he wish for the contractor to wait for him to move his stuff before this happened. (Text thread LL#03). The tenant said that the contractor could go ahead.
13. The landlord said that the contractor had the new bathroom completed within a couple of days.
14. The landlord said he didn't have the discussion with the tenant about the rodents causing the smell, he said it was clear to him that the tenant was no longer interested in renting from him and that his priority, was to get the apartment ready for new renters.

15. From the text thread (LL#03) the landlord stated that, the tenant requested all his money be refunded as he was incurring expenses for his hotel, meals and the rental of a moving truck and storage area. He also said he will need this money for the down payment on another apartment. The landlord had checked the apartment, he found it untidy but not damaged. The landlord expressed concerns that the furniture was still in the apartment and he said he didn't mind waiting a couple of days for the furniture to be there and asked the tenant how long do you expect it to be there. The tenant said he would be getting the furniture out right away and if not in an apartment then into storage. With this understanding the landlord then sent back the month's rent and the security deposit, totaling \$1,200.00 on 02-July-2022.
16. The landlord said that after the tenant received his money back he was slow to move his belongings. The text thread (LL#03) shows that the landlord asked on July 05, 11, 13 & 15 if the tenant had moved his belongings. The tenant was moving things throughout this time, however, on the 15th the tenant was no longer responding to his questions, when the landlord checked on the apartment on the 16th the tenant's belongings were moved.
17. The landlord said that initially, he felt that they were both in an unfortunate spot and he was trying to do the right thing by returning the money. He had the repairs done immediately and was ready to rent. Then he spent most of the month trying to have the tenant remove his belongings and was unable to show or rent the apartment during this time.
18. The landlord is requesting to have the rent covered for that month, he allowed the tenant to move in early to get straightened away, and he immediately returned the rent and security deposit when the tenant said that he wasn't staying there. The tenant had confirmed that he was moving his stuff right away and the landlord said he couldn't rent the apartment because the tenant wasn't doing what he agreed to.

Analysis

19. The first question to be resolved is, are they in a landlord tenant relationship? Section 9 of the Residential Tenancies Act, 2018, states:

Landlord and tenant relationship

9. (1) A relationship of landlord and tenant takes effect when the tenant is entitled to use or occupy the residential premises whether or not the tenant actually uses or occupies it.

.....

20. As indicated in paragraph 8, the landlord and tenant entered into a verbal agreement and the tenant, moved in and paid for that rental. The tenant does move out a few days later and his money is refunded, nonetheless a landlord tenant relationship has been established.

21. The tenant's concerns that the apartment has mold and is uninhabitable is a legitimate concern. Section 21, of the Residential Tenancies Act, 2018, says:

Notice where premises uninhabitable

21. (1) Notwithstanding subsection 18(1) and paragraph 18(3)(a), where a landlord contravenes statutory condition 1 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 effective immediately.

And Section 10 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:

1. Obligation of the Landlord -

- (a) The Landlord shall maintain the residential premises in a good state of repair and fit for habitation during the tenancy and shall comply with a law respecting health, safety or housing.
- (b) Paragraph (a) applies regardless of whether, when the landlord and tenant entered into the rental agreement, the tenant had knowledge of a state of non-repair, unfitness for habitation or contravention of a law respecting health, safety or housing in the residential premises.

22. The tenant's concern of mold is a legitimate concern, the landlord did his due diligence by immediately addressing the concern and having the matter professionally fixed. The landlord had this matter cleared up within a couple of days. The issue was not mold, but instead two dead rodents under the bathtub, nonetheless, the landlord accepted that the tenant did not want to live there; he immediately refunded the money.

23. The issue lies with the fact that the tenant did not act promptly. He assured the landlord that he would be moving his belongings quickly and then contrary to his promise left his belongings in the apartment, preventing the landlord from finding a new renter and causing financial loss to the landlord.

24. The tenant's belongings were in the apartment from 26-June-2021 until 15-July-2022, a period of 20 days. I find that the tenant owes the landlord for the rent for those 20 days. A daily rate of rent is calculated as \$800.00 a month x 12 months = \$9,600.00 a year. \$9,600.00 divided by 365 days = \$26.30 a day. \$26.30 a day x 20 days = \$526.00.

Decision

25. The landlord's claim for rent succeeds in the amount of \$566.00.

Issue 2: Compensation paid in damages \$600.00

Relevant Submissions

26. In paragraph 5 the landlord stated that when he returned all the money to the tenant, he had checked the apartment and found it to be untidy but nothing damaged. When he went back it was clear that the tenant didn't move with care and damage was created by the removal of the tenant's belongings.
27. The landlord is seeking \$600.00 for the following for damages:

Issue	Evidence	Amount
Damaged laminate	LL#07	\$450.00
Ceiling and walls damaged	LL#08, 09 & 10	\$100.00
Clean and garbage removal	LL#11 & 12	\$ 50.00

28. The landlord said the entire apartment was cleaned and new laminate laid before the tenant took occupancy.
29. The tenant had broken a mirror when moving and the shards of glass had dug into the laminate flooring; it was left this way. The landlord submitted a picture LL#07 of the holes in the floor.
30. The landlord submitted pictures of paint chipped off of walls and corners (LL#09 and 10) there was also a scuff mark showing red on the ceiling, the landlord said that the tenant had a red couch and he believes they must have turned it on its side and scuffed the ceiling when moving the couch out.
31. Finally, there was random garbage and food and drink containers left behind (LL#11 & 12), that required removal.
32. The contractor repaired these damages and cleaned up the apartment. The bill for \$602.50 (LL#13) is included with the evidence. The landlord said that the contractor put up plastic sheets and that the garbage and damage is not from the contractors work on the washroom.

Analysis

33. I accept that the moving of the tenant's belongings caused damage to the apartment. The receipt (LL#13) shows that the repairs and clean-up match the issues stated by the landlord. The tenant owes the landlord for this damage.

Decision

34. The landlord's claim for damages succeeds in the amount of \$600.00

Issue 3: Utilities \$62.50

Relevant Submissions

35. The landlord stated in paragraph 10 the rent amount did not include utilities. The tenant did not switch the utilities into his name. The landlord submitted the invoices from mid-June (LL#05) to mid-August (LL#06). The cost was \$61.74 and \$62.41.
36. The landlord is requesting \$62.50 for utilities.

Analysis

37. The tenant only lived in the apartment for a period of 20 days in the summer. His belongings would not have required heat during that time of year. It is reasonable to assume that the power used during this period was for the renovation and clean-up that was ongoing. The utilities for the 3 days that the tenant actually lived there would have been a minimal cost.

Decision

38. The landlord's claim for utilities fails.

Summary of Decision

39. The tenant shall pay the landlord \$566.00 for rent and \$600.00 for damages during the tenant's move out of the apartment, for a total of \$1,166.00.

February 10, 2022

Date

