

Residential Tenancies Tribunal

Application [REDACTED]
[REDACTED]

Decision 21-0554-05

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:12 a.m. on 24-February-2022.
2. The applicants, [REDACTED] hereinafter referred to as “tenant1 and tenant2,” attended by teleconference.
3. The respondent, [REDACTED] hereinafter referred to as “the landlord” attended by teleconference.

Preliminary Matters

4. All parties were present at the teleconference. The tenants served the landlord by email (TT#01) on 06-December-2021 and the landlord served the tenants by email (LL#01) on 01-February-2022. All parties confirmed their service.

Issues before the Tribunal

5. The tenants are seeking the return of their security deposit \$1,200.00.
6. The landlord is seeking to retain the security deposit \$1,200.00

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
8. 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: Return Security deposit \$1,200.00
Retain Security deposit \$1,200.00

Tenant's Position

9. Tenant1 submitted the rental agreement (TT#02) and reviewed the details. They moved in to the unit on 01-November-2020. Initially they signed a term lease from 01-November-2020 until 31-April-2021. The tenants were trying to purchase a house and not having any luck; tenant1 said that they requested a lease extension from 01-May-2021 until 31-August-2021. In August they signed another term lease for one year from 01-September-2021 until 01-September-2022.
10. The terms of these leases were: rent was \$1,600.00 utilities are not included. The rental period is from the 1st day of the month to the last with rent being due on the 1st day of the month. Tenant1 said that they paid their security deposit of \$1,200.00 on 23-October-2020 and that the landlord is still in possession of that deposit.
11. Tenant1 said that they were looking to buy a house and that they signed an agreement for the year lease with the understanding that if they found a house, they would find a person to sublet the unit who met the landlord's approval. He submitted the email thread of these discussions (TT#03).
12. Tenant1 said that they found a house on 11-September-2021 and that they asked the landlord for permission to start looking for a sublet. The landlord in the text thread (TT#03) agrees with them looking for someone to sublet. By 23-September-2021, they had found that they didn't have a person in their close circle, so they asked could they start advertising on social media. They told the landlord, at that time, that they would like their notice to be effective as of 11-September-2021. Tenant2 said that this went to the landlord's junk email and when they checked back, she responded on 30-September-2021, at that time, he said, that the landlord said she thought that her realtor had a renter secured and that the next tenants would be moving in November.
13. Tenant1 said that the landlord had used a realtor when they took a lease with her. He said that in the text thread (TT#03) on 16-July-2021, 20-July-2021 and 20-August-2021, that she mentions using a realtor to find a leaser. He indicates that this was always her plan, whenever they moved, and that they shouldn't have to pay that expense.
14. Tenant1 also points out that they were in agreement to pay for two months' rent for the notice of the lease. He acknowledges that the landlord had said that this means that they are unable to give notice until the last two months. He had checked this with his lawyer and their interpretation is that they have to give two months' notice, not that they are bound to the lease until the last two months.

15. Tenant1 said that they were in agreement to pay until the end of their lease or until she found a tenant. She did find a renter in November and they were paid for October rent and he believes that this was agreed upon.

Landlord's Position

16. The landlord confirmed the terms of the lease.
17. She had said that she signed the third lease with the tenants, she understood that the tenants were still looking for a house, but that they were responsible to find a person to sublet. She was concerned about trying to rent in the winter and required a year term to avoid that issue.
18. She also explained that she believed with a year lease, that they couldn't give notice until two months before the end of the term.
19. She said just 11 days into the lease, the tenants were looking to break their lease. On 23-September-2021 they told her that they were leaving and would like to backdate their notice to 11-September-2021; when they had that initial conversation.
20. She said that she was under the understanding that they were going to find a sublet. When they told her that they were giving notice on the 23-September-2021 she understood that they hadn't found a sublet and that she would have to find someone to rent. She then hired a realtor and submitted the receipt (LL#02) for \$920.00 for [REDACTED]
[REDACTED] The landlord said that she always uses a realtor to find renters.
21. The landlord said that the tenants broke the lease and that she felt they left her "high and dry," she acknowledges that the tenants are now saying that they would have covered the rent for a few months until she found a renter, but she said there were no conversations about that at that time.
22. The landlord said that on 27-September-2021 the email thread shows that she is telling them that they are required to pay rent until she finds a renter. The landlord said that the tenants did pay rent up to and including October-2021.
23. She said that she had a renter for 01-November-2021.
24. The landlord said a friend of hers worked with [REDACTED] and did not accept payment for her listing, he only accepted payment for the other realtor's services. She acknowledges that she did buy him a \$200.00 gift card as a thank you. She said that the \$280.00 was for her inconvenience.

Analysis

25. Section 18 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.**

.....

26. The tenants and landlord entered into a fixed term agreement from September 1, 2021 to September 1, 2022. The tenants informed the landlord that they were moving on 11-September-2021 and then on 23-September-2021 they said that they would like to give notice as of the 11-September-2021 date. (paragraph 12)
27. As per section 18 (1)(c) the tenants are obligated to rent until the end of the lease period that they signed, which is 01-September-2022. Once they no longer wished to rent the apartment, they would have to inform the landlord that they would be moving at the end of the term. They would be expected to give a minimum of two months' notice before the end of their lease period. The tenants must have cause to break a lease prior to the end of the term.
28. The tenants stated that they were willing to pay rent until the landlord found a tenant. The landlord found a tenant beginning 01-November-2021. The tenants believe that the landlord wasn't without rent and therefore didn't suffer loss. I agree that the landlord did not suffer loss of rent.
29. The landlord's claim however, was not for rent, she is claiming for her fees for the realtor and for her inconvenience.
30. The landlord acknowledged that she always uses a realtor to find renters and that she believed that the tenants were leaving and unable to find someone to sublet so she took action herself. (paragraph 20)
31. The tenants had indicated that the landlord used a realtor when they began their lease and that she had indicated that she was going to use one when they left their lease. Tenant1 said that they shouldn't have to cover that expense, because it is her choice to hire someone and she didn't give them time to find another renter. I agree with both parties that the hiring of a realtor was always the plan of the landlord, however the landlord and tenants had signed agreement stating that the tenants would rent for a full year and they had a verbal arrangement that they would find a suitable person to sublet if they found a home early. The tenants did not follow through with their obligation and did cause inconvenience to the landlord. The expense of a realtor was an unexpected expense created by the actions of the tenants and I find that the cost of this expense is their burden. The landlord shall retain the \$920.00 realtor fee from the tenants' security deposit.

32. The landlord is requesting the remaining \$280.00 for the inconvenience that was caused. Both the landlord and the tenants signed this agreement with the knowledge that the tenants were actively house hunting. The tenants gave the landlord immediate notice when they had successfully entered a purchase agreement for their house. The tenants also sought out a suitable sublet and kept in regular contact with the landlord. The landlord hired a company to find a new renter and was quickly successful. I find that there was minimal inconvenience caused and the tenants were attempting to mitigate any loss to the landlord, as they agreed to, when they entered the lease agreement.

33. Section 14, of the *Residential Tenancies Act, 2018*, states:

Security deposit

(14. (8) A security deposit is not an asset of the landlord but is held by the landlord in trust and may be used, retained or disbursed only as provided in this section.

(9) Not later than 10 days after the tenant vacates the residential premises, the landlord shall return the security deposit to the tenant unless the landlord has a claim for all or part of the security deposit.

(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.

(11) Where a tenant makes an application under paragraph (10)(b), the landlord has 10 days from the date the landlord is served with a copy of the tenant's application to make an application to the director under paragraph (10)(b).

.....

34. The tenant's made application for the return of their security deposit and upon review of our records, the landlord did file a counter claim within the 10 day time period. The landlord did not, however, prove that she incurred loss due to inconvenience and therefore it is incumbent upon her to return the remainder of the deposit to the tenants.

35. I find that \$280.00 of the security deposit is to be returned to the tenants.

Summary of Decision

36. The landlord shall retain \$920.00 of the security deposit and she will return \$280.00 to the tenants.

March 4, 2022

Date