

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0606-05

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:02 a.m. on 22-March-2022.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.

Preliminary Matters

4. The tenant submitted an affidavit for his service to the landlord (TT#01). The tenant said he served the landlord by registered mail on 06-March-2022 and by email on 07-March-2022, 11:08 p.m. The landlord is considered served on 08-March-2022; the landlord confirmed his service.
5. The tenant had named another landlord, who is another individual who lives in the house, [REDACTED], the landlord said that this individual is away at this time. The landlord also said that [REDACTED] is not a landlord, he rents a room at the house, the same as the tenant.
6. The landlord said that he is a leaseholder with the homeowner. The homeowner allows him to rent out the rooms in the house. The landlord said that he pays the rent to the homeowner and he paid a security deposit to the homeowner. When he rents rooms, to tenants, he collects rent from the tenants and holds in trust, their security deposit; they rent from him. As per section 3.3 of the *Residential Tenancies Act, 2018*, the landlord is a landlord to the tenant, as he entered into a rental agreement with the tenant and the tenant paid rent and used the rental premises.

Application of Act

3.(3) The relationship of landlord and tenant shall be considered to exist in respect of residential premises where the tenant

- (a) **uses or occupies** residential premises and
 - (i) **has paid** or agreed to pay rent to the landlord, or
 - (ii) a governmental department or agency has paid or has agreed to pay rent to the landlord;
- (b) **makes an agreement** with the landlord by which the tenant is granted the right to use or occupy residential premises in consideration of the payment of or the promise to pay rent; or
- (c) **has used or occupied** residential premises and
 - (i) **has paid** or agreed to pay rent to the landlord, or
 - (ii) a governmental department or agency has paid or agreed to pay rent to the landlord.

7. The landlord advertised the room for rent and the tenant submitted their text messages (TT#02). The tenant said that they entered a verbal agreement that the rent is \$450.00 plus shared cost of utilities and internet. The rental period is from the 1st day of each month until the last day; rent is due on the 1st day of each month. The tenant paid a security deposit of \$300.00 to the landlord on 16-October-2021. The tenant moved his belongings into his room on 22-October-2021 and he himself moved in on 23-October-2021. The tenant said that the landlord waived the rent for that first week. The tenant began paying rent on 01-November-2021. The tenant moved out on 06-December-2021. The tenant said that the landlord reimbursed \$156.00 of the security deposit the first week of January 2022.

Issues before the Tribunal

8. The tenant is seeking:
 - Validity of termination notice
 - Compensation for inconvenience \$760.28
 - Rent refunded \$362.90
 - Security deposit refunded \$144.00
 - Hearing expenses \$324.22

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
10. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*:

Issue 1: Validity of termination notice

Tenant's Position

11. The tenant submitted a “tenant’s notice to terminate early – cause” form for interference with peaceful enjoyment and reasonable privacy (LL#04). The form was dated for 17-December-2021 with a termination date of 26-December-2021.
12. The tenant submitted a Facebook message thread (TT#05) between himself the landlord and the other tenant. The tenant had issues with not being able to access the mail because the other tenant had taken it with him when he left for two weeks for work. The tenant also had issues with the cleanliness of the apartment, specifically the bathroom.
13. The conversation became heated and the tenant felt that the other tenant was being threatening. He included video (TT#06) showing the other tenant being aggressive on 06-December-2021.
14. After this incident the tenant said he reported the issue to the police. They came to the apartment and spoke to all three of them, the tenant then moved from the apartment.
15. The tenant said he sent the termination notice to ensure that notice was given, but he actually moved on 6-December-2021.

Landlord’s Position

16. The landlord said that there is only one key to the mailbox, that is all he was provided by Canada Post. He said that the other tenant left for work, for a couple of weeks, and he had accidentally taken the key. He said that there wasn’t anything else he could do.
17. The landlord said that when the police came to the apartment, he and the other tenant both apologized to the tenant for things getting heated. He said he accepted the tenant’s notice and was in agreement to terminate the tenancy on 26-December-2021.

Analysis

18. The landlord agreed to the termination notice and as per Section 18 (5) of the *Residential Tenancies Act, 2018*:

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.

19. The landlord accepted the tenant’s termination notice, therefore the weighing of evidence, to determine the validity of an interference of peaceful enjoyment claim, is not necessary.

Decision

20. The termination notice is accepted by the landlord.

Issue 2: Compensation for inconvenience \$760.28

Tenant's Position

21. The tenant said that he had to move because of the situation in the apartment. He said he was upset on the 6-December-2021 and had to take time off work; 3 hours. He said he also needed 7.5 hours to file the report and follow up with the police. He also had to move and find another place to live which is costing him more. Finally, he said he had to take the entire day to prepare and file for this claim; 7.5 additional hours.
22. The tenant submitted his paystub (TT#08) showing that he earns \$29.68 an hour so he would like to be reimbursed for his time (listed in paragraph 7) at \$29.68 an hour.

Landlord's Position

23. As stated in paragraphs 16 & 17, the landlord said he couldn't rectify the situation with the mailbox key, the other tenant was away for a two week period and he had mistakenly taken the key. When the situation became heated and the police were contacted both he and the other tenant apologized. He also accepted the termination notice and acknowledged that the tenant didn't wish to live there, so he was free to move.

Analysis

24. The time required for the tenant to terminate his agreement, seek police support, move and prepare for this hearing are not the responsibility of the landlord.
25. The landlord's responsibility to the tenant as per Section 10 of the *Residential Tenancies Act, 2018*, are as follows:

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.*

Decision

26. The tenant's claim for inconvenience fails.

Issue 3: Rent refunded \$362.90

Tenant's Position

27. The tenant acknowledges that the termination notice was dated for a termination date of 26-December-2021, however he said that on 06-December-2021 he moved out and turned in his key.
28. He is requesting rent back for the 25 days in December, from the 6th to the 31st, which he didn't live at the apartment.

Landlord's Position

29. The landlord acknowledges that the tenant moved out and left his key on the 6th of December. The landlord said that the tenant was free to use the apartment until his termination date of 26-December-2021.

Analysis

30. Payment of rent is a condition of the rental agreement entered into by both parties. Once the tenant terminates the agreement and this termination is accepted by the landlord as shown in paragraph 17th they are both no longer bound by this agreement.
31. The tenant's termination date is for the 26-December-2021, and whether or not he chooses to use the property, he is obligated to make rent payments up to and including his last day of his tenancy.
32. The tenant paid his rent for December; \$450.00. A daily rate will be calculated for the 5 days he did not live at the apartment. $\$450.00 \times 12 \text{ months} = \$5,400.00 \text{ per year}$, divided by 365 days = \$14.79 a day $\times 5 \text{ days} = \73.95 .

Decision

33. The tenant's claim for rent succeeds in the amount of \$73.95.

Issue 4: Security deposit returned \$144.00

Tenant's Position

34. The tenant said that the landlord reimbursed \$156.00 of the security deposit (paragraph 7), the tenant provided pictures showing that he had cleaned his room, as well as the condition of the washroom and the living room (TT#07, 08 & 09). Saying that he cleaned prior to moving. He would like the remaining \$144.00 security deposit refunded.

Landlord's Position

35. The landlord said he and the other tenant filed a counter claim on 17-March-2022, after being served notice of the hearing on 08-March-2022.

Analysis

36. A review of intake files indicates the landlord submitted information on March 17, 2022. However, the landlord did not submit an application in compliance with Section 42 of the Act. The landlord's claim cannot be considered in this decision; as he did not submit an application within 10 days from the date he was served with a copy of the tenant's application for return of security deposit.

37. When a tenant files an application for return of security deposit, the landlord has 10 days, from the time that the tenant serves the landlord notice of the application, to file an application (in accordance with Section 42) to retain the security deposit. In the event that the landlord doesn't file an application, in the allotted time period, the security deposit is returned to the tenant. The landlord can no longer make a claim for the security deposit. As per Section 14 of the Residential Tenancies Act, 2018, as follows:

Security deposit

14. (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).

(12) A landlord who does not make an application in accordance with subsection (11) shall return the security deposit to the tenant.

(13) Where a landlord does not make an application under paragraph (10)(b) or return the security deposit in accordance with subsection (12), the director may, without conducting a hearing, make an order requiring the landlord to return the security deposit to the tenant.

(14) Where a landlord does not make an application under subsection (11), he or she is not prohibited from making an application under section 42 other than an application with respect to a claim against the security deposit.

....

Decision

38. The tenant's claim for security deposit refund succeeds in the amount of \$144.00.

Issue 5: Hearing expenses \$282.48

Tenant's Position

39. The tenant submitted receipts (TT#10)for the following hearing expenses:

Item	Cost
Application fee	26.04
Staples	2.07
Staples	18.38
Fed ex	25.51
Staples	26.65
Purolater	32.06
Purolater	26.25
Staples	15.09
Commissioner of Oaths	75.00
Commissioner of Oaths	45.00
Staples	32.17
Total	324.22

Analysis

40. Policy 12, with this Section is that a party may claim hearing expenses where they have received an award that is in an amount that is greater than the security deposit. As the tenant was awarded rent in the amount of \$73.98 (paragraph 33) and security deposit of \$144.00 (paragraph 37) for a total of \$217.98; and as the security deposit is \$300.00, the tenant's claim for the hearing expenses does not succeed.

Decision

41. The tenant's claim for hearing expenses fails.

Summary of Decision

42. The landlord shall reimburse the tenant \$217.98 as follows:

- Rent \$73.98
- Security deposit \$144.00
- Total \$217.98

March 28, 2022

Date

