

Residential Tenancies Tribunal

Application 2022-No.062-NL

Decision 22-0062-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 2:03 p.m. on 17-May-2022
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as “tenant1 and tenant2” attended by teleconference.
4. The landlord provided a witness, [REDACTED]; the contractor who completed the repairs on the property. [REDACTED] attended and will hereinafter be referred to as “the witness.”

Preliminary Matters

5. The landlord served the tenants of notification of the hearing via text message on 11-March-2022. He provided an affidavit (LL#01) stating this and the tenants confirmed their service.
6. Hearing was initially scheduled for 16-May-2022, neither of the parties had submitted all of their evidence to each other. Both parties agreed to send all of the information to this board and each other, they both agreed to reconvene on 17-May-2022 after they received the information and had time to review.
7. There has been a previous decision concerning these participants; the security deposit has been awarded in full (\$450.00) as per Order 21-0048-02 (LL#03).

Issues before the Tribunal

8. The landlord is seeking:
 - Rent \$900.00
 - Utilities paid \$126.26
 - Late fees paid \$25.00

- Compensation for damages \$2,560.00
- Compensation for inconvenience \$250.00
- Hearing Expenses reimbursed \$20.00

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*: Section 8: Types of rental agreement, Section 10: Statutory conditions, Section 15: Fee for failure to pay rent, Section 23: Notice where landlord contravenes peaceful enjoyment and reasonable privacy, Section 31: Abandonment of rental premises by tenant, as well as Residential Tenancies policies 9: Claims for compensation and 12: Fees, costs and interest.

Issue 1: Rent \$900.00

Landlord's Position

11. The landlord said that he entered a written rental agreement (LL#02) for a term from 01-February-2020 – 30-June-2022. He said that the rental period is from the first day of the month to the last, rent is \$900.00, utilities are not included and rent is due in full on the first day of the month. He said that the tenants paid a security deposit on 22-January-2021 of \$450.00. He acknowledges that the security deposit has been awarded to the tenants; nonetheless he disputes the award.
12. The landlord said that when the tenants first moved in, they were unable to pay the first month's rent, so they mutually agreed that the tenants would pay him \$1000.00 a month for months 2 – 10 to cover the first month's rental. After this the tenants were to pay the \$900.00 per month as indicated in the rental agreement. The landlord said that the last month's rent paid is the November 2021 rent.
13. The landlord said that the tenants requested to end their rental agreement in November 2021. He said that he refused to agree to release them from their contract. He did agree that they could try to find a suitable sublet, however he would have final say.
14. The landlord said that the tenants did not find a sublet by the end of November 2021. He said that they gave him a Tenant's notice of termination for interference with peaceful enjoyment and reasonable privacy. He disputes that he was in violation and did not accept the notice. He believes that they wanted to get out of the rental agreement and devised a way to do this.
15. The landlord said that on 01-December-2021 he put a notice of abandonment (LL#04) on the property and on 02-December-2021 he took the property back.

16. The landlord said that one of the sublet applicants was suitable and she took occupancy in January 2022. He is seeking rent from the tenants for December 2021 as he lost this month's rent when they abandoned the property.

Tenant's Position

17. Tenant1 confirms the details of the rental agreement. She indicates that according to the Residential Tenancies Act that the length of the rental agreement of 16 months exceeds the amount recognized by the *Act*.
18. Tenant1 said that she had bought a house and wanted to end the tenancy. They did request this from the landlord. When he refused to let them end their lease, she said that the landlord agreed to let them sublet.
19. Tenant1 believes that the landlord was being unreasonable about the people they considered for the sublet. She said that she had advertised the house and that they had shown the house to at least 10 people. She provided text messages of conversations with the landlord about the potential candidates to sublet (TT#03, TT#04 and TT#05). She also points out that the landlord became personal in his texts (TT#06) and he said he hoped karma would come back on them.
20. Tenant1 said that due to his unreasonable behavior and what they believed to be personal attacks, they served him with a tenant's notice to terminate (TT#01) due to interference with peaceful enjoyment and reasonable privacy. The notice is signed on 25-November-2021 with a termination date of 30-November-2021. The tenants also provided a screen shot (TTT#02) of the termination notice being sent to the landlord on 25-November-2021. They said that they also delivered the keys to the landlord.
21. The tenants dispute having to pay for December rent, because they didn't live there and had provided the landlord notice.

Analysis

22. To determine whether the tenants owe rent we must first determine the validity of the termination notice the tenants gave to the landlord. Section 23 of the *Residential Tenancies Act, 2018*, states:

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.

Section 10 (7) (b) 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:

.....

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.

23. When giving a Section 23 notice, the burden of proof is on the tenant to show that the landlord has interfered with their peaceful enjoyment or reasonable privacy. According to Residential Tenancies Policy 7-05 Peaceful Enjoyment, interference of peaceful enjoyment is defined as: "an ongoing disturbance or activity, outside of normal everyday living, cause by the landlord or the tenant". Peaceful enjoyment may include, but is not limited to the following: (i) excessive noise; (ii) aggressive or obnoxious behaviour; or (iii) threats and harassment.
24. The landlord is within his rights to determine whether or not a potential tenant may be approved to sublet a current agreement. His unwillingness to accept the candidates offered does not fall under the definition of peaceful enjoyment.
25. Further to this the tenants' notice is signed, dated and delivered on 25-November-2021 with a termination date of 30-November-2022. A section 23 termination notice is for not less than 5 days and not more than 14 days. Section 7 of the Residential Tenancies Policy 7 states "where there is a reference to a number of clear days or "not less than," a number of days between two events, the days on which the events happen are excluded in calculating the number of days." This means that the date the termination notice is served and the date of termination, is not included in the count, therefore this notice only provides 3 days' notice, and doesn't meet the requirement of the Act.
26. Although the tenants provided a termination notice and had conversations with the landlord about them leaving, the termination notice is not valid, which means that they did abandon the premises.
27. When tenants abandon a rental premises the Residential Tenancies Act, 2018, states:

Abandonment of residential premises by tenant

31. (1) Where a tenant has abandoned the residential premises, the landlord may enter and take possession of the residential premises.

(2) A tenant is considered to have abandoned a residential premises where

- (a) *the tenant has vacated the residential premises;*
- (b) *the rental agreement is not terminated in accordance with this Act or the rental agreement; and*
- (c) *rent is overdue.*

(3) Before entering a residential premises for the purpose of taking possession under subsection (1), the landlord shall, not less than 24 hours before entering, post a notice in a conspicuous place on the residential premises stating

- (a) the landlord's belief that the tenant has abandoned the residential premises;*
- (b) the landlord's intention to enter the residential premises for the purpose of taking possession unless the tenant notifies the landlord, before the time set out in the notice, that the tenant has not abandoned the residential premises; and*
- (c) the day and hour when the landlord will enter the residential premises.*

(4) Where the tenant notifies the landlord under paragraph (3)(b) that the residential premises have not been abandoned, the landlord shall not enter the residential premises.

28. The landlord followed the guidelines of the Act when he took back possession of his property. The tenants were still in a contractual rental agreement with the landlord in December and have caused the landlord loss of rent for that month. The landlord mitigated that loss by bringing in a new tenant in January of 2022.
29. The tenants are responsible for the loss of rent and shall compensate the landlord for the loss of rent for December 2021.

Decision

30. The landlord's claim for compensation for rent lost succeeds in the amount of \$900.00.

Issue 2: Utilities Paid \$126.26

Landlord's Position

31. The landlord provided the December 2021 NL Power bill (LL#05). The bill is for \$86.26 and the meter was read, according to the bill, on 20-December-2021. The landlord estimated \$40.00 for the remainder of December. The landlord is seeking reimbursement of the NL Power of \$126.26.

Tenant's Position

32. Tenant1 confirms that she had their names removed from the NL Power bill for the end of November 2021.

Analysis

33. As per paragraph 28 it has been determined that the tenants are still considered in a rental agreement with the landlord for the month of December 2021. Paragraph 11 states that the utilities are not included in the rent.
34. I accept the billing from NL Power provided by the landlord, showing a balance of \$86.26 is owed by the tenants. This tribunal does not accept estimates and therefore, I do not accept the \$40.00 owed for the remainder of the month.

Decision

35. The landlord's claim for utilities owed succeeds in the amount of \$86.26.

Issue 3: Late fees paid \$25.00

Landlord's Position

36. The landlord is claiming \$25.00 late fees for the overdue rent payment.

Analysis

37. Section 15 of the *Residential Tenancies Act, 2018* states:

Fee for failure to pay rent

15. (1) Where a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister.

38. The tenants did not pay December 2021 rent on 01-December-2021. Residential Tenancies policy 12 states that "a tenant is responsible to pay the landlord the full rent on the day the rent is due..... This fee applies even if the tenant gives notice to move out, or abandons the unit. The late fee of \$25.00 will be applied.

Decision

39. The landlord's claim for late fees succeeds in the amount of \$25.00.

Issue 4: Compensation for damages \$2,560.00

Issue 5: Compensation for inconvenience \$250.00

Landlord's Position

40. The landlord is claiming damages for repairs he completed after the tenants moved out. The landlord didn't complete a condition report with the tenants when they took

possession of the property. He does point out, that when the tenants took possession they sent him a text message saying everything was good except for a crack in the front window.

41. The landlord said that the tenants asked could the put a window air conditioner in the front window. He agreed. He said that they must have cut the window frame siding and provided a picture (LL#06). He is claiming \$1,200.00 for materials and \$250.00 for labor; he hasn't completed this work yet.
42. The landlord submitted a picture of a bedroom door (LL#12), he said that there is a hole punched in the door and that someone tried to put plaster on it. He is seeking \$100.00 for materials and \$100.00 for labor; he hasn't completed this work yet.
43. The landlord said he had a contractor come in to paint and repair all of damages to the walls, as follows:
 - Large hole in the back porch wall that had been badly plastered, he provided a picture (LL#19) he is seeking \$120.00 for materials and \$60.00 for labor.
 - Screw holes in back porch (LL#07), he is seeking \$10.00 for materials and \$60.00 for labor.
 - Marks on the wall where the bed may have struck the Master bedroom wall (LL#10), he is seeking \$25.00 for materials and \$60.00 for labor.
 - Screw holes in the Master bedroom walls (LL#16), he is seeking \$10.00 for materials and \$60.00 for labor.
 - Marks on the wall where the bed may have struck the second bedroom wall (LL#14), he is seeking \$25.00 for materials and \$60.00 for labor.
 - Screw holes in the second bedroom walls (LL#13), he is seeking \$10.00 for materials and \$60.00 for labor.
 - Damage to the bathroom window (LL#11); he is seeking \$30.00 for materials and \$30.00 for labor.
 - In addition to the walls the contractor repaired laminate flooring (LL#19) in the back porch/laundry room area. There was a leak from one of the hoses. He is seeking \$120.00 for materials and \$60.00 for labor.
44. The landlord said that the entire house was painted one year before the tenants moved in and the flooring was also replaced at that time. The total for the work in paragraph 43, completed by the contractor is \$800.00.
45. The landlord did not provide a receipt, he did however, have his contractor come in to give testimony. When asked the cost for individual jobs the witness said "I can't say exactly," when asked how much the total invoice was, the witness said " I believe it is \$1,500.00."
46. The landlord is also seeking compensation for a microwave that has gone missing, materials \$100.00 and labor \$10.00, as well as a picture that used to cover the electrical panel in the hallway, materials \$50.00 and labor \$20.00. He has not replaced these items.

47. The landlord is seeking \$250.00 in compensation for the inconvenience of having to have this work completed.

Tenant's Position

48. Tenant1 said that they did send the landlord an email stating that everything was good with the exception of the crack in the front window, she entered the email into evidence (TT#10). She said there were nail holes in the walls from previous tenants, but she didn't consider this damage, she just considered it wear and tear. She said they used the nails that were already in the wall for hanging pictures.

49. Tenant1 said that they did have a window air conditioner; they didn't cut the siding, however, it did crack when they removed the air conditioner.

50. Tenant1 agreed that they did damage the bedroom door and attempted to fix it.

51. Tenant1 said that the microwave caught fire and they threw it out. She said that the missing picture didn't suit their taste so they hung their own picture. She said his picture is on the closet shelf in the second bedroom.

Analysis

52. Under Section 10.(1)2. of the *Residential Tenancies Act, 2018*, the tenant is responsible to keep the premises clean and to repair any damage caused by a willful or negligent act.

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:

2. *Obligation of the Tenant* - The tenant shall keep the residential premises clean, and shall repair damage caused by a wilful or negligent act of the tenant or of a person whom the tenant permits on the residential premises.

Accordingly, in any damage claim, the applicant is required to show:

- That the damage exists;
- That the respondent is responsible for the damage, through a willful or negligent act;
- The value to repair or replace the damaged item(s)

53. The landlord has clearly shown through his evidence that the damages exist. The tenants have agreed to the damage to the large hole in the back porch wall, the crack in the siding around the window and the hole in the bedroom door.

54. The landlord has not proven that the nail holes in the walls were caused by these tenants.

55. He has also given no evidence of the actual cost of the repairs or replacement. The testimony of his witness was unconvincing and the total amount stated of \$1,500.00 for the invoice exceeds the \$800.00 listed under the repairs fixed by the contractor.
56. The landlord has not meet the burden of proof in his claims for damages.

Decision

57. The landlords claim for damages and compensation for inconvenience fails.

Issue 6: Hearing expenses reimbursed \$20.00

58. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#17) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

Summary of Decision

59. The tenants shall pay to the landlord \$945.00, as follows:
 - Rent \$900.00
 - Late fees 25.00
 - Hearing expenses 20.00
 - Total \$945.00

May 24, 2022

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office