

Residential Tenancies Tribunal

Application 2022 No. 66NL
Application 2022 No. 97NL

Decision 22-0066-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:20 AM on 31 March 2022 via teleconference.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED] and [REDACTED], hereinafter referred to as "landlord1" and "landlord2", respectively.
3. The respondent, [REDACTED], hereinafter referred to as "the tenant", also participated.

Issues before the Tribunal

4. The landlord is seeking the following:
 - An order for vacant possession of the rented premises;
 - An order for payment of rent in the amount of \$700.00; and
 - Authorization to retain the security deposit of \$350.00.
5. The tenant is seeking the following:
 - An order for payment \$3800.00 in compensation for damages; and
 - An order for a payment of \$2098.00 in compensation for inconvenience.

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 case is section 19 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

8. Landlord1 amended her application at the hearing and stated that the total rent owing, as of the date of the hearing, was \$2100.00.

Issue 1: Rent Owing - \$2100.00

Relevant Submissions

The Landlord's Position

9. The tenant entered into a rental agreement with [REDACTED] on 05 December 2020 and 1 year later the landlord purchased the rental property from [REDACTED] and the tenant continued to reside at the property, under the same terms. The rent remains at \$700.0 per month and when the landlord purchased the property, [REDACTED] transferred to the landlord the \$350.00 security deposit the tenant had paid when he moved in.
10. Landlord1 stated that since she had taken over as the new landlord, the tenant has paid no rent to her whatsoever. She is seeking an order for a payment of \$2100.00 in rent for the months of January, February and March 2022.

The Tenant's Position

11. The tenant acknowledged that he had not paid rent for those 3 months and he agreed that he owed the landlord \$2100.00.
12. The tenant pointed out that he receives income support from the Department of Advanced Education and Skills (AES), and he claimed that the reason that he had not been paying his rent was because his benefits were cut off. He stated that the landlord had sent AES an Intent to Lease document, via DocuSign, but on that document the postal code was incorrect. It was because of that issue that his benefits were cut.
13. In response to that claim, landlord1 stated that the tenant had informed her that his benefits were already cut in December 2021 as they were investigating an allegation of fraudulent activity on the part of the tenant. She also stated that she had not been speaking with anyone at AES and that they would not return her calls.

Analysis

14. There is no dispute that the tenant had not paid his rent, as required, and that he owes the landlord \$2100.00 for the months of January, February and March 2022.

15. The tenant presented no credible evidence at the hearing to establish that the reason his income support benefits were cut was because of any action of the landlord.
16. As the landlord is also seeking an order for vacant possession of the rented premises, I find that they are entitled to a payment of rent for those 3 months, \$2100.00, as well as a daily rate of rent in the amount of \$23.01 (\$700.00 per month x 12 months = \$8400.00 per year ÷ 365 days = \$23.01 per day).

Decision

17. The landlords' claim for a payment of rent succeeds in the amount of \$2100.00.
18. The tenant shall pay a daily rate of rent in the amount of \$23.01, beginning 01 April 2022, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Vacant Possession of Rented Premises

Relevant Submissions

The Landlord's Position

19. The landlord submitted a copy of a termination notice (█ #2) with their application which landlord1 stated was sent to the tenant, by e-mail, on 25 January 2022.
20. This termination notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 05 February 2022.
21. Landlord1 stated that the tenant has not vacated the rented premises as required and she is seeking an order for vacant possession.

The Tenant's Position

22. The tenant acknowledged that he had received this termination notice. He also pointed out that 2 other notices were also posted to his door earlier in January 2022.

Analysis

23. Section 19 of the *Residential Tenancies Act, 2018* states:

Notice where failure to pay rent

19. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),

...

(b) where the residential premises is

(i) rented from month to month,

(ii) rented for a fixed term, or

(iii) a site for a mobile home, and

the amount of rent payable by a tenant is overdue for 5 days or more, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 10 days after the notice is served on the tenant.

(2) Notwithstanding subsection (1), where the tenant pays the full amount of the overdue rent, including a fee under section 15, before the date specified in the notice under paragraph (1)(a) or (b), the rental agreement is not terminated and the tenant is not required to vacate the residential premises.

24. On 25 January 2022, the day the termination notice was issued, the tenant was in rental arrears in the amount of \$700.00 and had been in arrears since the beginning of that month. No payments have been made since the notice was issued.
25. As the notice meets all the requirements set out in this section of the *Act*, and as it was properly served, the landlord's claim succeeds.

Decision

26. The landlord's claim for an order for vacant possession of the rented premises succeeds.
27. The tenant shall pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

Issue 3: Compensation for Damages - \$3800.00

Relevant Submissions

The Tenant's Position

28. The tenant stated that he had an agreement with [REDACTED] that, during his tenancy, he could use the shed, which was located on the property, to store his personal possessions. He stated that in January 2022, while preparing to move out of the rental unit, he had placed a number of his items in that shed. The tenant claimed that in late January 2022, and without any notice, the landlord demolished the

shed, and in the process destroyed all of his personal possessions that he had stored inside of it.

29. The tenant argued that because use of the shed was included in the rent that he had been paying to the landlord, he is entitled to a rebate of \$350.00, based on the square footage of the shed that had been taken away from him, without notice.
30. The tenant also claimed that he is entitled to compensation for the loss of the items that he had been storing in the shed, and with his application, he submitted a list of these items along with their depreciated replacement value (████ #1). The tenant calculates that these items are worth \$3430.00.
31. In support of his claim, the tenant submitted a video that he had taken showing the shed being demolished and he pointed out that an aluminum ladder is clearly visible in that video.
32. With respect to the costs the tenant is seeking here, no receipts were submitted with his application and he stated that none of these items have yet been replaced.

The Landlord's Position

33. Landlord1 stated that when she had purchased the unit from █████, she was informed by him that the tenant had not been using the shed and that █████ had been storing his vehicles and car parts in it. After the landlord purchased the property, landlord2 stated that he inspected the shed, verified that it was empty, and he then screwed the doors closed. In support of that claim, the landlord submitted an e-mail from █████ (████ #3) in which he writes "that on the day of closing there was nothing in the garage".
34. Because the shed was dilapidated, the landlord obtained a permit to demolish it. Landlord1 stated that the tenant was informed that the shed was being demolished and he was asked to remove his vehicle from that area of the property so that that work could be carried out.
35. With respect to the items that the tenant claimed were in the shed at the time of demolition, landlord2 questioned why it was the tenant took no action on that day to stop the demolition or to inform the workers that his possessions were inside. Landlord1 also pointed out that although many of the items on the tenant's list were electronics or items that were made of metal, no metal or electronic items were found in the material that was taken to the dump after the shed was demolished.

Analysis

36. I was not persuaded by this portion of the tenant's claim.
37. He presented no evidence to establish that he had been given permission, by either █████ or by the landlord, to use the shed, and the submitted rental

agreement that the tenant had entered into with [REDACTED] ([REDACTED] #1) does not indicate that the rent he was required to pay included the provision of a storage shed. I accept landlord1's claim that the shed was used by [REDACTED] during the first year of this tenancy and that claim was even corroborated by the tenant. For these reasons, the tenant's claim that he is entitled to a rebate of rent because the shed was demolished does not succeed.

38. With respect to the items that the tenant claims were in the shed on the day it was demolished, I also find that that claim does not succeed. First of all, and to reiterate, I do not accept the tenant's claim that he had been given permission to use the shed. Secondly, I accept the landlord's corroborated testimony that the shed was empty when the property was purchased and that the doors were then screwed closed. And finally, I find that the tenant had presented insufficient evidence to establish that these items actually were in the shed on the day it was demolished. Except for an aluminum stepladder, none of the items listed by the tenant are visible in his video.

Decision

39. The tenant's claim for compensation for damages does not succeed.

Issue 4: Compensation for Inconvenience - \$2098.00

Relevant Submissions

The Tenant's Position

40. This portion of the tenant's claim concerns 2 items: the costs of moving to [REDACTED], \$1048.00, and a payment of rent, \$1050.00.
41. With respect to the moving costs, the tenant stated that after he served the landlord with his application, landlord1 and landlord2 paid him a visit and had offered to pay for him to move to [REDACTED] provided that he convince the tenant residing next door not to file an application with this Section. The tenant stated that landlord1 and landlord2 wanted him to "get out of his car right away" and tell this other tenant that "he had given her wrong information". Because he did not comply with that request, landlord1 withdrew her offer of paying for his move.
42. The tenant submitted a screenshot from U-Haul's website ([REDACTED] #3) showing that he would be charged \$1048.00 to rent a cargo truck and a trailer.
43. Regarding the issue of rent, the tenant stated that before the house was sold, he was informed by [REDACTED] that he would be able to reside at the unit until 01 May 2022. However, after the landlord took over from [REDACTED], he received a notice indicating that he was going to have to vacate on 01 March 2022, a difference of 2 months. The tenant stated that if he had been given the rent for those 2 months, less the damage deposit—a total of \$1050.00—he could have been moved out before January 2022. He also stated that this is money that he would have had to pay if he was moving into a new place anyhow.

The Landlord's Position

44. Landlord1 acknowledged that she had offered to help the tenant move to [REDACTED] and she stated that when she had made that offer, she gave the tenant a week and a half to provide her with details about the date of the move. Landlord1 stated that just a couple of days after making that offer, though, she discovered that the tenant had been posting personal information about her on social media and that he had been slandering her. Because of those actions, landlord1 withdrew her offer to help the tenant.
45. With respect to the issue of rent, landlord1 stated that neither she nor [REDACTED] had ever told the tenant that he could reside at the unit, rent-free, until May 2022.

Analysis

46. There was no dispute that landlord1 had offered to help the tenant with a move to [REDACTED] and that that offer was later revoked. According to the tenant, the offer was revoked because the tenant did not live up to the condition associated with the offer, viz., tell the person next door that he had given her the wrong information. But on that telling, I am wholly perplexed as to why the tenant thinks the landlord has to live up to her side of the bargain when he did not live up to his.
47. I am even more befuddled by the tenant's reasoning in his claim for \$1050.00. I determined that the tenant had not paid his rent for January, February and March 2022. I have also determined that the landlord had properly terminated this tenancy by issuing him a valid termination notice, effective 05 February 2022, because he had not paid his rent. That notice is valid even if the tenant had previously entered into a fixed-term lease with [REDACTED] that was not set to expire until 01 May 2022—landlords do not have to honour the expiration dates in leases where a tenant does not pay his rent.

Decision

48. The tenant's claim for compensation for inconvenience does not succeed.

Issue 5: Security Deposit

49. The tenant paid a security deposit to [REDACTED] when he moved into the unit in December 2020 and that deposit was transferred to the landlord when they purchased the unit in 2021. As the landlord's claim has been successful, they shall retain that deposit as outlined in this decision and attached order.

Summary of Decision

50. The landlord is entitled to the following:

- A payment of \$1750.00, determined as follows:
 - a) Rent Owing\$2100.00
 - b) LESS: Security Deposit..... (\$350.00)
 - c) Total.....\$1750.00
- An order for vacant possession of the rented premises,
- A payment of a daily rate of rent in the amount of \$23.01, beginning 01 April 2022 and continuing to the date the landlord obtains possession of the rental unit,
- The tenant shall also pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

07 April 2022

Date

John R. Cook
Residential Tenancies Tribunal