

Residential Tenancies Tribunal

Application 2022 No. 123NL

Decision 22-0123-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:08 AM on 09 June 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 a payment of rent in the amount of \$770.00,
 - An order for a payment of \$442.68 in compensation for damages,
 - An order for a payment of utilities in the amount of \$204.56.
 - An order for a payment of hearing expenses totalling \$20.00, and
 - Authorization to retain the partial security deposit of \$300.00.

Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
6. Also relevant and considered in this decision are sections 10 and 31 of the *Residential Tenancies Act, 2018* and policy 9-3: Claims for Damage to Rental Premises.

Issue 1: Rent Owing - \$770.00

Relevant Submissions

The Landlord's Position

7. Landlord1 stated that she had entered into a monthly rental agreement with the tenant, commencing 23 June 2021, and a copy of that executed agreement was submitted with her application (■■■ #1). The agreed rent was set at \$770.00 per month and it is acknowledged in the submitted agreement that the tenant had paid a security deposit of \$300.00.
8. Landlord1 stated that the tenant had informed her in mid-November 2021 that she was terminating their agreement, effective 01 December 2021. She stated that she informed the tenant that this was not a valid notice, and that she had to provide a full, 1-month's notice. Accordingly, on 26 November 2021, the tenant sent her an e-mail indicating that she was terminating her agreement effective 31 December 2021.
9. The landlord stated that the tenant vacated the property on either 02 or 03 December 2021, and she cancelled her electricity account on 03 December 2021.
10. On 08 December 2021, the landlord e-mailed to the tenant a Landlord's Notice of Abandonment (■■■ #2), indicating that she would be taking possession of the unit on 10 December 2021. Landlord1 stated that the tenant had contacted her after that e-mail was sent and indicated that she had not abandoned the property and that she was still removing items and cleaning.
11. On 15 December 2021, the landlord sent an e-mail to the tenant indicating that she would be entering the unit on 17 December 2021 for the purposes of carrying out an inspection. She testified that when she entered, she discovered that the tenant had turned off the electrical breaker. Landlord1 stated that in order to protect the property, she took possession of the unit on 20 December 2021 and the locks were changed on that date.
12. Landlord1 stated that the tenant had not paid her rent for December 2021 and she is seeking an order for a payment of \$770.00 for that month.

The Tenant's Position

13. The tenant acknowledged that she had not paid her rent for December 2021.
14. However, she pointed out that according to the second termination notice she had sent to the landlord, this tenancy was not set to end until 31 December 2021. She argued that when the landlords entered and changed the locks on 20 December 2021, they did so illegally, and she is therefore not responsible for rent after that date as the unit was no longer in her possession.

15. The tenant argued that she is only responsible for rent up to 20 December 2020, and she calculated that she owes \$496.50.

Analysis

16. I agree with the tenant in this matter, and for the same reasons she gave at the hearing.
17. This tenancy was not set to terminate until 31 December 2021, and the landlord had not issued the tenant any other termination notice indicating that it would end on some earlier date. Furthermore, although the landlord may have believed, on 20 December 2021, that the tenant had abandoned the property, before she could retake possession of the unit, she was required, as per section 31.(3) of the *Residential Tenancies Act, 2018*, to first post a notice of abandonment, not less than 24 hours before she entered.
18. As this tenancy was still ongoing on 20 December 2021, all of the terms of the lease were still in place and the *Residential Tenancies Act, 2018* continued to apply to their relationship. In particular, statutory condition 6, set out in section 10 of the *Act*, states that a landlord shall not, without the consent of the tenant, change the locks at the unit.
19. As the locks were changed at the unit on 20 December 2021, in violation of statutory condition 6, and as the tenant did not have use or enjoyment of the property after that date, I find that the landlord is not entitled any rent after that date. I calculate the amount owing to be \$496.77 (\$770.00 x 20/31).

Decision

20. The landlord's claim for a payment of rent succeeds in the amount of \$496.77.

Issue 2: Utilities - \$204.56

Relevant Submissions

The Landlord's Position

21. Landlord1 stated that the tenant was responsible for paying for her own electricity during this tenancy, but she claimed that the tenant had cancelled her electricity account on 03 December 2021. After that date the costs of the electricity were billed to the landlord.
22. With her application, the landlord submitted 2 electricity bills (■■■■ #3), showing that she was charged \$116.45 for the period between 03 December and 20 December 2021, and \$248.43 for the period from 20 December 2021 to 20

January 2022. The landlord calculates that the tenant owes \$204.56 for the period ending 31 December 2021.

The Tenant's Position

23. The tenant acknowledged that she had cancelled her electricity account for the rental unit on 03 December 2021. She argued that as the landlord had changed the locks on 20 December 2021, she should only have to pay for the electricity that the landlord was charged for up to that date.

Analysis

24. For the same reasons I outlined in the previous section, I find that the tenant is not responsible for any electricity charges billed to the landlord after 20 December 2021. As such, the landlord's claim succeeds in the amount of \$116.45.

Decision

25. The landlord's claim for a payment of utilities succeeds in the amount of \$116.45.

Issue 3: Compensation for Damages - \$442.68

Relevant Submissions

The Landlord's Position

26. After they took possession of the rental unit, landlord2 stated that his workers had to remove and dispose of items the tenant had left behind in her carport and in the back yard and he pointed to his submitted photographs showing the condition of the unit on 08 January 2022 (■■■ #4). The items that required disposal included window coverings, fans, dressers, garbage bags, cardboard boxes, vacuum cleaners, and various household and kitchen items.
27. According to the submitted invoice, the landlord's maintenance staff charged the landlord \$442.68 for 2 workers to carry out that work over a period of 6 hours.

The Tenant's Position

28. The tenant acknowledged that she had left some items behind in the carport, but she testified that she had complained to the landlord, on 08 December 2021, that other residents at the complex were also placing their unwanted possessions in her carport for disposal. She argued that as not all of the items were hers, she should not be held responsible for the full amount the landlord is seeking here.

29. The tenant also argued that the landlord's submitted photographs don't show the condition of the unit when she moved out and she complained that they must have been taken earlier. As proof of that claim, she pointed out that the landlord's photographs show that there were items on top of the refrigerator, but her photographs, which she claims were taken on 13 December 2021, show that the unit is clean and that nothing is on top of the refrigerator.
30. The tenant also argued that a claim for 12 hours to remove the items shown in the photographs is excessive, and she suggested that an award of \$221.00 would be fairer.

Analysis

31. I agree with the tenant that it ought not to have taken 2 workers 6 hours each to remove and dispose of those items shown in the submitted photographs. I find that an award of 3 hours, for 2 workers, is more reasonable. As such, the landlord's claim succeeds in the amount of \$221.34—half of what was claimed.

Decision

32. The landlord's claim for compensation for damages succeeds in the amount of \$221.34.

Issue 4: Hearing Expenses

33. The landlord submitted a hearing expense claim form with their application, as well as a receipt for \$20.00 for the costs of filing this application. As the landlord's claim has been successful, the tenant shall pay this hearing expense.

Issue 5: Security Deposit

34. Landlord1 stated that the tenant had paid a security deposit of \$300.00 on 02 June 2021 and receipt of that deposit is acknowledged in the submitted rental agreement. As the landlord's claim has been successful, they shall retain that deposit as outlined in this decision and attached order.

Summary of Decision

35. The landlord is entitled to the following:


a) Rent Owning	\$496.77
b) Utilities	\$116.45
c) Compensation for Damages	\$221.34
d) Hearing Expenses	\$20.00

e) LESS: Security Deposit..... (\$300.00)

f) Total Owing to Landlord..... \$554.56

03 November 2022

Date


John R. Cook
Residential Tenancies Tribunal