

Residential Tenancies Tribunal

Application 2022-No.166-NL

Decision 22-0166-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:14 a.m. on 12-May-2022.
2. The applicants, [REDACTED] and [REDACTED], are represented by [REDACTED], hereinafter referred to as "the landlord" she attended by teleconference.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as "tenant1 and tenant2" did not attend.

Preliminary Matters

4. The tenants were not present or represented at the hearing and I was unable to reach them by telephone at the start of the hearing. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, where the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as they have been properly served. The landlord submitted an affidavit (LL#01) with their application stating that she had served the tenants with notice of the hearing, by delivering both packages personally and handing them to tenant2 on 15-March-2022. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.
5. The landlord amended their application to remove premises vacated because the tenants have moved out of the apartment.

Issues before the Tribunal

6. The landlords are seeking rent \$2,300.00

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 19: Notice where failure to pay rent, and Section 31: Abandonment of residential premises by tenant.

Issue 1: Vacant Possession of the Rental Premises

Landlord's Position

9. The landlord submitted the written terms of the rental agreement (LL#02) they had with the tenants. The tenants moved in on 01-October-2021 and moved out around 10-April-2022. The tenants have a monthly agreement where they pay \$650.00 a month for rent, utilities are not included. Their rental period is from the first day of the month to the last and rent is due on the 1st. The landlord said that the tenants were supposed to pay a \$400.00 security deposit; however they never paid that money.
10. The landlords had served the tenants with a Section 19 termination notice (LL#04) for failure to pay rent. The termination date was 08-March-2022. The tenants did not move at that time.
11. The landlord said that the rental unit is in a triplex and that she was on site for another unit on 07-April-2022. At that time there were belongings around the tenants' apartment and it appeared to still have people living there. When she returned on the 10th of April, the belongings that were outside were gone. The landlord said she looked into the window of the unit and it was empty. She tried the front door and it was unlocked. She regained possession at that time.
12. The landlord pointed out that the tenants did not return the keys, did not give notice and the unit was just left unlocked.
13. The landlord submitted a rent ledger (LL#03) as follows:

Rent ledger
2022-No.166-NL

Date	Action	Amount	total
Nov, 2021	rent due	650.00	650.00
Nov, 2021	rent paid	-600.00	50.00
Dec, 201	rent due	650.00	700.00
Dec, 2021	rent paid	-250.00	450.00
Dec, 2021	rent paid	-100.00	350.00
Jan, 2022	rent due	650.00	1000.00
Jan, 2022	rent paid	-450.00	550.00

Jan, 2022		rent paid	-200.00	350.00
Feb, 2022	rent due		650.00	1000.00
Mar, 2022	rent due		650.00	1650.00
April, 2022	rent due		650.00	2300.00

14. The landlord said she included all of April's rent in the amount owed for a number of reasons:
 - The tenants never informed her of their intent and it was just luck that she discovered that they had moved
 - The place was left damaged and dirty and she hired a cleaner and has hired a contractor to do the repairs, they are waiting on this work to be finished; currently the unit is not in good enough condition to be rented.
 - Rent is due in full on the first day of the month and the tenants have caused them loss of rent by their behavior.
15. The landlords are seeking \$2,300.00 for rent.

Analysis

16. Non-payment of rent is a violation of the rental agreement between the two parties.
17. The landlord is seeking rent for the time the tenants lived there, as well as, up to the end of the month of April. Rent is paid for use and occupancy of a premises, however, the actions of the tenants, by abandoning the property, caused the landlords to suffer damages due to loss of rent.
18. Abandonment of property is covered under Section 31 of the Residential Tenancies Act, 2018, as follows:

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.

19. The tenants did not move out as required by the landlords' Section 19 termination notice on 08-March-2022 and are now required to give notice to the landlords. The tenants abandoned the premises and did not inform the landlords, they also left the apartment dirty and damaged according to the landlord. The landlord has attempted to mitigate the

loss of rent by having the unit cleaned and hiring a contractor, however the apartment is still not ready to be rented.

20. As per the agreement in paragraph 9 rent is due in full on the first day of the month, the tenants owe the landlords for the months that they lived at the rental. I also find that the landlords have mitigated their loss by immediately hiring people to have the apartment cleaned and damages repaired, however this work takes time to complete and the landlords have not been able to rent during that time. The tenants are responsible for the loss of rent for the remainder of April and should have paid rent in full on the first of the month as required by the rental agreement.
21. The tenants owe the landlord \$2,300.00 in rent.

Decision


22. The landlords' claim for rent succeeds in the amount of \$2,300.00

Summary of Decision

23. The tenants shall pay the landlords \$2,300.00 for rent.

May 17, 2022

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office