

Residential Tenancies Tribunal

Applications: 2022 No. 0236 NL

Decision 22-0236-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:20AM on 28 April 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing.
3. The respondent, [REDACTED], hereinafter referred to as "the tenant", did not participate in the hearing.
4. An affidavit of service was provided by the landlord (L#1) confirming that the tenant was served of the claim against him.
5. The details of the claim were presented as a written month-to-month agreement with rent set at \$900.00 per month since 1 January 2022. Proof of a security deposit in the amount of \$200.00 was provided as paid by the tenant (L#2). The landlord testified that she offered the smaller security deposit in exchange for the tenant completing some paint and plaster work in the rental unit. The rental agreement then terminated 28 February 2022, and the landlord issued a notice of abandonment on 8 March 2022 declaring that the premises was abandoned 1 March 2022 (L#3).
6. In a proceeding under the *Residential Tenancies Act*, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. The standard of proof, in these proceedings, is referred to as the balance of probabilities which means the applicants have to establish that their account of events is more likely than not to have happened.

Issues before the Tribunal

7. The landlord is seeking the following:
 - Compensation paid for inconvenience in the amount of \$197.25; and
 - Payment of rent in the amount of \$900.00.

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).
9. Also relevant and considered in this case is section 10 of the *Act* and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

10. The tenant was to reside in the rental premises with a woman the landlord believed to be the tenant's wife and their children (L#5). The written rental agreement acknowledges the tenant, a [REDACTED] and two teenage children as residents in the rental unit (L#4).
11. This woman, [REDACTED] was also identified, by first name only, on the application for dispute resolution. The landlord provided evidence of an E-transfer receipt for payment of January 2022 rent, from a [REDACTED] (L#6).
12. The landlord testified that she became aware in mid January 2022, that this [REDACTED] was no longer residing in the rental unit and that a different woman and additional children, as well as pets had taken up occupancy in the rental unit. The landlord provided a screen shot of her text conversation with the tenant acknowledging that his "girlfriend and her two kids" have come (L#7).
13. When asked if she considered this [REDACTED] to still be a legal tenant of her rental unit, the landlord stated that she did not. The landlord's evidence of her conversations related to the termination of this tenancy involved written conversations with the tenant only. No evidence of written conversations with [REDACTED] were provided, save for [REDACTED] payment of January 2022 rent.
14. Specific to the hearing on 28 April 2022, the tenant was not present or represented at the hearing and I was unable to reach him by telephone. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*.
15. 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 he has been properly served.

16. As the tenant was properly served, and any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in his absence.

Issue 1: Payment of Rent

Landlord's Position

17. The landlord informed that the rental agreement for [REDACTED] [REDACTED] is month-to-month and that the tenant took occupancy on 1 January 2022. A copy of the written agreement was provided (L#4).
18. The monthly rent was set at \$900.00.
19. The landlord provided a copy of her receipt for \$900.00 for rent paid in January 2022 (L#3) and testified that no rent was received from the tenant for February 2022.
20. Prior to no rent being received for February 2022, the landlord, as mentioned above in the Preliminary Matters, testified to unexpected changes in the names, numbers and types of occupants in her rental unit. The landlord provided a screenshot of an email she sent to the tenant on 3 February 2022 where she stated that she was "very disappointed" in the situation (L#8).
21. The landlord also provided a screenshot of a text conversation, from an unknown date, with the tenant where he wrote that it was "unrealistic unreasonable and illegal" to be provided with an "out of here in a day" notice to vacate. Also in this text, the tenant wrote, "I can pay rent and be out of here by the end of the month". The landlord, who relied on her brother, as the next door neighbour of the rental premises, testified that the tenant did indeed vacate the rental premises by the end of February 2022.
22. In response to questions of how, and why, exactly was the rental agreement with the tenant terminated, the landlord referred again to the various screenshotted conversations she provided and acknowledged that she did not use any of the "Notice to Terminate" templates provided by the Landlord Tenant Office. When asked specifically if she referenced "failure to pay rent" as a cause for terminating tenancy, the landlord stated that she did not.
23. The landlord also made frequent mention of COVID during the hearing when referring to why she did not visit the rental premises in person at the start of the tenant's occupancy in the unit, and why she accepted electronic proof of the tenant and his alleged wife as tenants in her rental unit.

Analysis

24. The rental agreement was month-to-month and the rental premises that was under dispute and the subject of this hearing, was occupied for two months.
25. The landlord had multiple concerns regarding the tenant, including non-payment of rent, but testified that she did not terminate his tenancy for non-payment of rent. Regardless, the landlord testified that the tenant vacated the premises by the end of February 2022.
26. I accept the landlord's claim that the tenant has not paid his rent as required and that the tenant owes \$900.00 for the period ending 28 February 2022.

Decision

27. The landlords' claim for rent succeeds in the amount of \$900.00.

Issue 2: Compensation for Inconvenience (\$197.25)

Relevant Submissions

28. The landlord submitted a copy of receipts for cleaning supplies (\$17.25) and a round trip bus ticket (\$180.00) from her home community to the community where her rental premises is located (L#10).
29. The landlord stated that she attended the rental premises to clean in early March 2022 after taking it back through the notice of abandonment (L#3).
30. When asked if she conducted formal move in and move out inspections with her tenants so as to document the current state of her rental premises at each point in time, the landlord testified that she did not. When asked if her brother, the next door neighbour to her rental premises formally supports move in and move out activities at her rental premises, she testified that he does not.
31. Regarding the state of her rental premises prior to the tenant moving in on 1 January 2022, the landlord testified that she conducted a FaceTime call with her previous tenant and stated that her previous tenant demonstrated that everything was good throughout the whole house.
32. The landlord submitted a comprehensive series of photos demonstrating assorted mess and debris across her rental unit once she retook possession of the unit in March 2022 (L#11). She testified that she spent 20 hours cleaning the unit and submitted a comprehensive series of photos of the unit after the cleaning occurred (L#12).

33. When asked if her rental unit is currently occupied, the landlord testified that she was able to secure a tenant for March 2022 who paid for the full month rent and took up occupancy in the rental premises part way through the month.

Analysis

34. I accept the landlord's claim that the unit had not been properly cleaned after the tenant moved out and that there was garbage left behind both inside and outside of the unit.
35. Under clause 10(1)2 of the *Act* the tenant is responsible to keep the premises clean and to repair any damage caused by a willful or negligent act.

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.

36. Under Section 47 of the *Act*, the director has the authority to require the tenant to compensate the landlord for loss suffered or expense incurred as a result of a contravention or breach of the *Act* or the rental agreement.

Order of director

47. (1) After hearing an application the director may make an order
(a) determining the rights and obligations of a landlord and tenant;

(b) directing the payment or repayment of money from a landlord to a tenant or from a tenant to a landlord;

(c) requiring a landlord or tenant who has contravened an obligation of a rental agreement to comply with or perform the obligation;

(d) requiring a landlord to compensate a tenant or a tenant to compensate a landlord for loss suffered or expense incurred as a result of a contravention of this Act or the rental agreement

37. I find that the landlord is entitled to compensation for the claimed cleaning supplies as the amount of cleaning required was in excess of what is typically expected when a tenant vacates an rental premises.
38. However I do not accept the landlord's claim for the cost of her bus ticket (\$180.00). Maintaining a rental premises is a business decision by landlords, and as such, the tribunal does not award compensation for travel costs related to the upkeep and maintenance of their rental premises.

Decision

39. The landlord's claim for compensation for inconvenience succeeds in the amount of \$17.25.

Issue 3: Hearing Expenses

40. The landlord claimed \$20.00 for the expense of applying for the hearing (L#13).

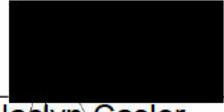
41. As her claim has been successful, the tenant shall pay this hearing expense.

Summary of Decision

42. The landlord is entitled to the following:

- A payment of \$937.25, determined as follows:
 - a) Rent Owing..... \$900.00
 - b) Compensation for inconvenience\$17.25
 - c) Hearing Expenses.....\$20.00
 - d) Total\$937.25

06 May 2022
Date


Jaclyn Casler
Residential Tenancies Tribunal