

Residential Tenancies Tribunal

Application 2022-No.268-NL
2022-No.325-NL

Decision 22-0268-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:01 a.m. on 04-July-2022.
2. The applicant, [REDACTED] and [REDACTED], were represented by [REDACTED], she is hereinafter referred to as “tenant1” she attended by teleconference. [REDACTED] did not attend the teleconference and is hereinafter referred to as “tenant2.”
3. The respondent and counter applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference

Preliminary Matters

4. The landlord submitted an affidavit (LL#01) stating that he served the tenants with notification of the hearing on 23-June-2022 personally; tenant1 confirms service. The tenants submitted an affidavit (TT#01) stating that they served the landlord with notification of the hearing on 11-April-2022; the landlord confirms service.

Issues before the Tribunal

5. The tenants are seeking
 - Security deposit refunded \$1,350.00

The landlord is seeking

- Rent paid \$1,800.00
- Late fees 75.00
- Utilities 250.00
- Security deposit applied to monies owed 1,350.00
- Hearing expenses \$20.00

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 decision are the following sections of the *Residential Tenancies Act, 2018*: Section 14: Security deposit, Section 15: Fee for failure to pay rent, and Section 18: Notice of termination of rental agreement.

Issue 1: Rent \$1,800.00

Landlord's Position

8. The landlord reviewed the details of the rental agreement. They had a verbal monthly agreement that begins on 01-October-2021. The tenants paid \$1,800.00 a month for rent on the first day of each month; utilities are not included. The tenants gave the landlord notice that they were moving on 01-March-2022 for the end of that month. The landlord accepted the notice.
9. The landlord said that he started advertising the house for rent in March and scheduled some viewings. He said he gave the tenants 24 hours' notice prior to a viewing. After a couple of viewings tenant2 contacted him to say that they weren't in agreement with the viewings, as they were very disruptive and time consuming due to Covid and trying to sanitize with a small child.
10. The landlord said that he only needed to give 24 hours' notice and told tenant2 that he would be contacting the Residential Tenancies Board. At this time their communication broke down.
11. The landlord then spoke with tenant1 and she said that they would like him to schedule all his viewings for the week on the same day. The landlord didn't believe this would work and he said that he told them he wouldn't disrupt them any more with viewings and they could pay rent for the month of April. He would show the house after they moved and would get it rented by May.
12. The tenants moved out the end of March on the 28th and the landlord started advertising and showing the house again at this time.
13. The landlord said that the new tenants started their rental in May. The landlord said that the new tenants started putting things in the house the end of April.

Tenant's Position

14. Tenant1 agrees to the terms of the rental agreement as stated by the landlord.
15. Tenant1 said that the landlord was scheduling 1 viewing a day and that this was very time consuming. She said that she was trying to have the house in pristine condition for the viewing and then having to sanitize before bringing her child back into the house. She said her husband noticed the time that this was taking and they decided that everyone coming once a week would make more sense. Then they would be

inconvenienced for a few hours once a week instead of everyday. She included the text thread with the landlord (TT#02).

16. Tenant1 said that they had a roommate who was off on Wednesday and Saturdays so he could be at the house during the viewing.
17. Tenant1 said that when they were looking at places to rent this is how those places were shown; everyone with back to back appointments, once a week.
18. Tenant1 disagrees with paying rent for April, she said that they didn't stop the viewings they just wanted them scheduled to be less inconvenient. She also said that they moved out early and the landlord was able to show the house the end of the month with no one living there. She also said that the landlord had the place rented in April. She provided a picture (TT#03) of the house that is dated for 22-April-2022 and she points out that there are curtains hung and children's toys in the window.

Analysis

19. Section 10 of the Residential Tenancies Act, 2018, states:

Statutory conditions

10. (5). *Entry of Residential Premises - Except in the case of an emergency, the landlord shall not enter the residential premises without the consent of the tenant unless*

- (a) ***notice of termination of the rental agreement has been given and the entry is at a reasonable time for the purpose of showing the residential premises to a prospective tenant or purchaser and a reasonable effort has been made to give the tenant at least 4 hours' notice;***
 - (b) ***the entry is made at a reasonable time and written notice of the time of the entry has been given to the tenant at least 24 hours in advance of the entry; or***
 - (c) ***the tenant has abandoned the residential premises under section 31***
20. The landlord does have a right to show the property to potential renters when there is a termination notice in effect as was in this case.
21. I accept Tenant1 stating that they never said that the landlord couldn't show the property, they just found the possibility of a viewing a day, every day, to be too inconvenient and that they thought the scheduling of viewings once a week would be less inconvenient for everyone involved. She also said that as they were looking at rentals themselves, this was how they were being shown and she believed it would work.
22. I agree that the landlord was not only within his rights to give notice and show the house, it is incumbent on him to mitigate his loss by renting this house. The landlord's choice to stop viewings, and take down his advertisements resulted in the loss of rental income for this property. The tenants' solution of weekly viewings was not attempted and therefore we are unable to say with any certainty if this solution would have worked for everyone involved.

23. I find that the loss of income is due to the landlord's decision to act, or not act in this case, to protect the income. The tenants request is reasonable considering they have a young child and there was a pandemic in full effect at the time in question. Further to this, should the landlord have demanded his right to enter and show the house, it would have been supported under the *Act*.
24. Further to this, rent is paid for use and enjoyment of the rented property. The tenant has shown, that for at least a third of the month of April, someone else is occupying the property. It is uncertain if rent was provided during that time; if there was no rent paid for the convenience of the new renters, this again is due to the decisions and actions of the landlord.
25. The loss of the rental income is due to the actions of the landlord and not the burden of the tenants.

Decision

26. The landlord's claim for rent fails.

Issue 2: Late fees \$75.00

Issue 3: Utilities \$250.00

Landlord's Position

27. The landlord is seeking late fees for the rent he was seeking in April. He was also seeking utilities for the month of April.

Analysis

28. As the landlord's claim for April's rent was unsuccessful, the same logic and reasoning apply to late fees and utilities for that month.

Decision

29. The landlord's claim for late fees and utilities fails.

Issue 4: Security deposit applied \$1,350.00

Issue 5: Security deposit returned \$1,350.00

Analysis

30. The landlord's claims for loss are unsuccessful. As per Section 14 of the *Residential Tenancies Act, 2018*, states the security deposit is not an asset of the landlord and shall be returned to the tenants.

Security deposit

14. (8) A security deposit is not an asset of the landlord but is held by the landlord in trust and may be used, retained or disbursed only as provided in this section.

Decision

31. The landlord shall reimburse the \$1,350.00 security deposit to the tenants.

Issue 6: Hearing expenses reimbursed \$20.00

32. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#02) and pursuant to policy 12.01, is not entitled to reimbursement of that cost from the tenant as his claim was unsuccessful.

Summary of Decision

33. The landlord shall reimburse the \$1,350.00 deposit to the tenants.

July 7, 2022

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office