

Residential Tenancies Tribunal

Application 2022 No. 0271 NL

Decision 22-0271-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 1:47 PM on 02 August 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 "tenant1", participated in the hearing. She testified that she was participating on behalf of her boyfriend [REDACTED], who is hereinafter referred to as "tenant2".
4. The originally scheduled hearing date was postponed and notice of the new hearing date was provided by this office to both parties (AA#1) in accordance with 42(9) of the *Residential Tenancies Act*.
5. The details of the claim were presented as an agreement operating since August 2018. Monthly rent was set at \$1,200.00 a month exclusive of utilities and a security deposit in the amount of \$900.00 was collected.
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. In these proceedings the standard of proof 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:
 - Validity of Termination Determined/Premises Vacated;
 - Payment of rent in the amount of \$3,200.00;
 - Payment of damages in the amount of \$1,530.00; and
 - An order for the security deposit to be retained 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*.
9. Also relevant and considered in this case is sections 14 and 19 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

10. Tenant2 was not present at the hearing, but tenant1 claimed to represent his interests. Of note is that tenant1 and tenant2 have cohabitated since at least August 2018 as named tenants in the rental premises.
11. The landlord issued the tenants with a section 19 notice of Termination on 17 April 2022 with a stated move out date of 18 May 2022 (L#1).
12. Because the tenants vacated the rental premises and the landlord sold the rental premises at the end of May 2022, the landlord's claim for Validity of Termination Determined/Premises Vacated was removed from this dispute.

Issue 1: Payment of Rent (\$3,200.00)

Landlord's Position

13. The rental premises is a main floor apartment in a single family home located at [REDACTED].
14. The landlord submitted a written "Summary of Rent Monies Owning" documenting that only \$400.00 was received in March 2022 and that no rent was received for April 2022 resulting in \$2,000.00 owing as of 30 April 2022 (L#2). The landlord testified that no rent (\$1,200.00) was received for May 2022, despite the tenants residing in the rental premises until 23 May 2022. The landlord later testified that the tenants vacated on 22 May 2022.

Tenants' Position

15. Tenant1 agreed that rent monies are owed to the landlord. She testified that she reached out to the landlord in February 2022 asking for accommodation due to financial challenges experienced as a result of the pandemic but never established an agreement. Tenant1 testified that the \$400.00 payment in March 2022 (instead of \$1,200) was the first time she was ever short on rent. Tenant1 also testified that she (T#1) and tenant2 (#2) submitted statutory declarations to the landlord declaring that their incomes had been negatively impacted by COVID.
16. Tenant1 testified that she and tenant2 vacated the rental premises on 19 May 2022, but that she was willing to say she vacated on 22 May 2022 if that is when the landlord believes he regained possession of the unit.

Analysis

17. I accept that the landlord and tenant1 agree that rent is owing. As shown in the landlord's rental summary, \$800 is owing for March 2022 and \$1200 is owing for April 2022, making for total arrears of \$2000.00 as at 30 April 2022. Regarding entitlement for rent for May 2022, I accept that the landlord regained possession of the rental premises on 22 May 2022 and so I calculate total arrears owing to be **\$2,867.90**. This amount was arrived at through the following calculations:

- $\$1200.00 \times 12 = \$14,400.00 / 365 = \$39.45$ per day
- $\$39.45 \times 19 = \867.90 for May 1 - 22, 2022
- $\$2000.00 + \$867.90 = \$2,867.90$

Decision

18. The landlord's claim for rent succeeds in the amount of **\$2,867.90**.

Issue # 2: Damages (\$1,530.00)

Landlord's Position

19. The landlord testified that the house is about 20 years old, and that the rental unit was last renovated in 2016. He testified that there was no condition move-in or move-out inspection report and or photos taken at either time. Regarding his damage claims, the landlord testified that he did not submit any supporting documentation or pictures. The landlord testified he "kept things bare bones" and that he was looking for compensation for:

- Providing a credit to purchaser for bird poop cleaning \$400.00
- Providing a credit to the purchaser for repairing a hole in the washroom next to vanity \$250.00
- Additional cleaning of unit \$180.00
- Removal of garbage, recycling, debris \$400.00
- Replace bedroom door \$300.00

Tenant's Position

20. Tenant1 testified that she objects to the damage claim because any damages in the unit existed when she moved in with tenant2. She testified that she left the unit clean and that the landlord was unreasonable with his timelines for requesting that garbage be removed. Tenant1 acknowledged that she accidentally damaged the bedroom door by putting a hole in it when moving and agreed to pay \$150.00 towards replacing the bedroom door. Tenant1 denied causing any holes in the washroom next to the vanity.

21. Tenant1 testified that she lost her business and contracts during the time that she had to be available to the landlord when he required access to the rental unit so that he could prepare it for sale. She stated that, she had to be present for all the times her unit was accessed because she has four pets that she did not feel comfortable leaving alone in the unit with others.

Analysis

22. The landlord and tenant1 disagreed about the claim for compensation for damage. Because the claim for compensation comes from the landlord, he is required to provide and speak to the evidence (witness, documentary, or recorded) necessary to establish on the balance of probabilities that:

- That the damage they are claiming compensation, exists;
- That the respondent is responsible for the reported damage through a willful or negligent act; and
- The value to repair or replace the damaged item(s).

23. I find that landlord failed to provide documentation related to the state of the rental premises when the tenants moved in, and also failed to provide invoices or receipts related to any of the charges he incurred. As such, I find that the landlord's claim for compensation for damage does not succeed because he failed to establish that:

- the damage existed,
- that the tenants caused the damage, as well as
- the costs incurred to repair or place the damaged items.

24. Where tenant1 agreed that she damaged the bedroom door, I do not find it reasonable to award compensation because the landlord failed to establish the state of the door prior to the tenants moving in, and he also failed to establish that the claimed \$300.00 was in fact required to restore the door to an appropriate state.

Decision

25. The landlord's claim for compensation for damage does not succeed.

Issue # 3: Security Deposit (\$900.00)

Relevant Submissions

26. The landlord and tenant1 agreed that a \$900.00 security deposit was collected.

Analysis

27. Section 14, sub 10, 12 and 14 of the *Residential Tenancies Act, 2018* states:

(10) *Where a landlord believes he or she has a claim for all or part of the security deposit,*

(a) *the landlord and tenant may enter into a written agreement on the disposition of the security deposit; or*

(b) *the landlord or the tenant may apply to the director under section 42 to determine the disposition of the security deposit.*

(12) *A landlord who does not make an application in accordance with subsection (11) shall return the security deposit to the tenant.*

(14) Where a landlord does not make an application under subsection (11), he or she is not prohibited from making an application under section 42 other than an application with respect to a claim against the security deposit.

28. Where the landlord's claim for payment of rent has exceeded the \$900.00 value of the security deposit collected, he is entitled to retain the full amount of the deposit.

Decision

29. The landlord's claim for retaining the tenant's security deposit succeeds in the full amount of \$900.00.

Summary of Decision

30. The landlord is entitled to the following:

- An order to retain the security deposit in the full amount of \$900.00.
- An order for payment of \$1,967.90, determined as follows:
 - a) Rent owing.....\$2,867.90
 - b) Less security deposit.....(\$900.00)
 - c) Total.....\$1,967.90

03 August 2022

Date

Jaclyn Casler
Residential Tenancies Tribunal