

## Residential Tenancies Tribunal

Applications: 2022 No. 0281 NL  
2022 No. 0400 NL

Decision 22-0281-00

Jaclyn Casler  
Adjudicator

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### Introduction

1. The hearing was called at 9:02AM on 29 June 2022 via teleconference and continued on 28 July 2022 at 2:04 PM.
2. The applicant, [REDACTED], hereinafter referred to as "the tenant", participated in the hearing.
3. The respondent, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing.
4. An affidavit of service was provided by the landlord confirming that the tenant was served, by email, of the counter claim against her. Proof of service by email was also provided (L#1).
5. An affidavit of service was initially not provided by the tenant regarding her original claim for the return of her security deposit and the landlord refused to waive her right to service. Because of this, the tenant's application was then brought back before the tribunal at a later date (e.g., 28 July 2022) and the tenant provided an affidavit of service related to this new date (T#1).
6. The details of the claim were presented as fixed term agreement, expected to begin 01 April 2022 and run until 31 March 2023. Monthly rent was to be \$1,550.00 and a security deposit in the amount of \$1,162.50 was collected. A copy of the written rental agreement was provided (L#2).
7. 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**

8. The tenant is seeking an order for return of security deposit in the amount of \$1162.50.
9. The landlord is seeking the following:
  - An order for payment of rent in the amount of \$1,550.00;
  - An order for payment of utility fees in the amount of \$424.11; and
  - An order to use the security deposit of \$1,162.50 against monies owed.

## **Legislation and Policy**

10. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).
11. Also relevant and considered in this case is section 14 and 20 of the *Act* and *Residential Tenancies Policy 07-004 Breach of Material Term*.

## **Preliminary Matters**

12. This application for dispute resolution was specific to the main floor 3 bedroom apartment in the residential premises located at [REDACTED]. It was noted that the tenant had intended to simultaneously rent both the main floor and the basement unit at the rental premises. A separate hearing occurred on 20 June 2022 specific to the basement apartment (e.g., 2022-0298-NL and 2022-0379-NL).

### **Issue 1: Payment of Rent \$1150.00**

#### **Landlord's Position**

13. The landlord testified that the rental premises is a brand new residential dwelling with two approved and registered rental units. She testified that there were delays in completion due to the Omicron COVID variant that was circulating at the time. The landlord testified that the tenant was supposed to reside in the rental premises with a trio of young foster children.
14. The landlord testified that she is a registered real estate agent with 10 years experience and that her requirement for tenant's insurance is noted on page 4 of the rental agreement provided (L#2). She also testified that her own insurance policy requires that all tenants have their own tenants' insurance policies.
15. The landlord referred to a series of emails received from the tenant on the evening of 29 March 2022 (L#3). The landlord testified that these emails included proof of appropriate tenant's insurance for the main floor apartment of the rental unit, however, they did not provide appropriate proof of tenant's insurance for the

basement apartment that the tenant was to also rent. The landlord testified that after significant back and forth, the final email she received from the tenant on 29 March 2022 included an attached insurance policy for the tenant's then rental address, and not the rental address of the landlord's premises that was to be occupied from 01 April 2022 onwards.

16. The landlord testified that she also received a letter from the tenant that evening, said to be from the insurance provider, however, the landlord was extremely doubtful because the letter was not on company letterhead and nor was it signed by a designated representative (see page 8 in L#3). The landlord testified repeatedly that the tenant was "*untruthful*" with the insurance representatives and also wrote on the particular document that it "*appeared falsified*".
17. The landlord referred to the series of text messages, also on 29 March 2022, that were submitted to this tribunal (L#4). As per these text messages, the tenant wrote that she would "*cancel*" if she could not get keys as expected. Because the tenant then "*refused*" to answer a phone call from the landlord that night, the landlord testified "*that said to me, I am not taking your place*".
18. When asked why she did not provide keys to the main floor apartment as proof of adequate insurance had been provided, the landlord testified that:
  - The tenant did not want keys to one unit only;
  - Proof of insurance disappeared when it was "*replaced*" by a different policy which meant that the required policy was cancelled (e.g., as shown in L#3);
  - She couldn't understand why the tenant didn't spend an hour on the phone and wasn't willing to spend an extra \$12 a month for appropriate insurance; The tenant has been in Canada for five years and is a permanent resident – "*she should understand insurance requirements by now*"
  - Her own homeowner insurance policy prevented her from providing keys to the tenant for the main floor apartment only; and
  - She had to provide two sets of keys, or no keys at all.
19. The landlord testified that she did not formally cancel the lease from her side, because she "*pretty much*" followed the legislation by setting out her absolute rental agreement terms (e.g., proof of tenant's insurance required) in the text messages chains that she submitted as evidence (L#4).
20. The landlord testified that she listed the rental unit as available on Marketplace for 01 April 2022 and was able to secure a tenant for the main floor apartment from 01 May 2022. Because of this, the landlord testified that she is seeking \$1,550.00 in rent as compensation for the lost revenue.

### **Tenant's Position**

21. The tenant testified that she contacted the landlord in January 2022 looking for a place to rent for her family and her foster children. The tenant testified that she

was really confused by communications from the landlord and that she originally wanted to move into the rental premises in March 2022 but was told that it was not available. The tenant submitted proof of her text/chat messages with the landlord dating back to 02 February 2022 and through to 01 April 2022 as evidence “*of how hard she tried*” to do what was needed to rent from the landlord (T#2).

22. The tenant testified that she is not accustomed to the requirement for tenant's insurance as it is not used in the [REDACTED] where she is from. The tenant testified that she is by herself and that she tried her best to figure out the insurance requirements. She testified that she asked the landlord for guidance on what insurance policy she required but did not receive a specific response.
23. The tenant testified that she did not move into the rental premises on 01 April 2022 because the landlord “*did not want her*”. Regarding the landlord's concern about the insured address changing in the proof of tenant's insurance provided, the tenant testified that she was trying her best, and was just forwarding all emails she received from insurance to the landlord. She testified that she did not even look at the documents provided. A review of the text messages confirm that the tenant sent multiple documents to the landlord on 29 March 2022 in her effort to provide proof of acceptable tenants insurance to the landlord.
24. The tenant testified that she wrote she would cancel the rental agreement from her side, only because she had foster children who needed a place to stay. She testified that she was helped by a social worker who arranged for some of the children to return to their families, and that she managed to find another friend who opened their house for the tenant starting 01 April 2022.
25. The tenant testified that she was willing to move into the main floor apartment only while paying for the basement apartment as required until the insurance question was resolved. She testified that she tried to communicate and tried to make arrangements with the landlord so as to honour her intended move in date of 01 April 2022, but was not successful. The tenant also asked, “*why does she (the landlord) say I am lying, why would I be lying?*”
26. The tenant testified that her friend saw the rental unit listed on Facebook Marketplace as available 01 April 2022.

## **Analysis**

27. The parties disagree about who is to blame for the tenant not taking occupancy of the rental premises on 01 April 2022 as intended by the written rental agreement that was provided to this tribunal (L#2). Both parties agreed that the landlord did not provide keys to the tenant but disagree on the reasons. The landlord testified that she did not give keys to the tenant because the tenant 1) failed to secure appropriate tenants insurance and b) said she no longer wants the rental unit. In contrast, the tenant testified that she was not given keys to the rental unit because the landlord “*did not want her*”.

28. Regarding the legal framework for assessing the validity of the claim and counter claim put forward by both parties, each is required, as noted in paragraph 7, to establish on the balance of probabilities that their account of events is more likely than not to have happened.

29. As noted in paragraph 18, the landlord provided various supporting reasons for why she did not provide the tenant with keys to the rental unit. Most notable of which, was that she did not receive acceptable proof tenant's insurance for BOTH this rental unit, and the rental unit that is the subject of claim and counter claim specific to the downstairs unit of the rental premises (2022-0298-NL and 2022-0379-NL). The landlord also testified and provided a supporting email chain (L#3) to establish that any proof of insurance for the rental premises was then cancelled out when the tenant provided an insurance policy that no longer had the insured address of the rental unit (See page 15 of L#3).

30. However, a closer review of these documents raises some questions that impact the credibility of the landlord's argument (e.g., that the tenant intentionally cancelled her insurance coverage) and cause me to doubt the validity of the landlord's claim for the following reasons:

- The email on page 11 from Cooperators refers to at least a 23 page attached document and only 3 pages were provided as attached by the landlord – because only 3 pages are provided I cannot confirm that the document provided was indeed the document attached to the email.
- The email on page 11 states: "*Note that you are not obligated to show this to your landlord as the proof of insurance letter is sufficient proof that you have liability coverage at your new address*" (e.g., the landlord's rental unit). I note that the aforementioned letter is provided on page 8 and it duly identifies the landlord's rental unit as the "Insured Premises". It seems unlikely that such an email would include an attachment for an insured premises other than the landlord's rental unit. I also note that this is letter that the landlord claimed to be falsified in paragraph 16.

31. Regarding the landlord's other reason for not giving keys, she testified that the tenant, "*said multiple times*" that she no longer wanted the rental premises on 29 March 2022. However, a closer review of the text messages submitted by the landlord, provides additional context that must be considered. In particular, I find that the text messages support the testimony from the tenant that she attempted to satisfy the requirement for tenants insurance so that she could take occupancy as intended. As discussed in paragraph 25, the tenant even offered to continue renting the downstairs unit despite it no being occupied until July by her family members. The landlord wrote: "*That's not good enough because my policy won't cover it for vacancy past April 1*" (See 2 of 6 in L#4). I found this to be ironic as the landlord repeatedly testified that she "*did not understand*" why the tenant "*didn't just spend 10 minutes on the phone*" and it would appear as though the landlord could have spent her own 10 minutes on the phone so as to facilitate the

tenant's occupancy of the rental premises until the insurance question was resolved. But she did not.

32. Consequently, I find that the landlord created her own situation when she refused to provide keys to a tenant who provided the required tenants insurance for the rental unit that was the subject of this dispute AND also intended to honour her obligations to pay rent for both the main floor unit (subject of this dispute) and the downstairs unit (subject of 2022-0298-NL and 2022-0379-NL). Where evidence was provided of the tenant writing on multiple occasions, that "*I am not renting ur property.... Cancel it*", this appears to be a reasonable reaction from a tenant who found out on 29 March 2022 that she no longer had a place to live on 01 April 2022 for herself or her three foster children.
33. Additionally, I reviewed the extended text message chain provided by the tenant and note that the landlord wrote on 30 March 2022, after being prompted by the tenant (See page 88-89 on T#2 **emphasis added**):

*[Tenant], I'm not giving you anything. Honestly, the nerve to even think that I would put you in my house now after all of your insults. I can't have someone in my house disrespecting me and you messaged me at least three times last night and told me you did not want to rent my house any longer. You're not a rational person. I'm truthfully thankful that you showed me the side of you before I handed you over keys. I haven't done anything to you. You just didn't listen. I held up my end for April 1, you didn't on your insurance. As far as your money back.... Right now I am out rent and scrambling to find another tenant which I don't expect to have issue. **But you do have a lease in place that you agreed to....** Once I know how much money I am out when I can get another tenant to take possession, I will reimburse you the remaining if there is any....."*

34. This is notable because it means that the landlord did not provide keys despite having a rental agreement "in place" with the tenant who provided proof of tenant's insurance for the rental unit and appeared fully willing to pay rent for both units in the rental premises until the insurance question related to the downstairs unit was resolved. As such, I find that the landlord is not entitled to compensation for rent for April 2022, the period of time her rental unit sat empty, because the unit appears to have sat empty as a result of the landlord's actions only.

## **Decision**

35. The landlord's claim for payment of rent in the amount of \$1,550.00 does not succeed.

## **Issue 2: Payment of Utilities \$424.11**

### **Landlord's Position**

36. The landlord submitted two utility bills for the main floor apartment of the rental premises (L#5). The first bill had an estimated meter reading date of 19 April 2022 and was in the amount of \$188.85. The second bill had an estimated meter reading date of 29 April 2022 and was in the amount of \$232.19.
37. The landlord testified that this second invoice was triggered by the new tenant in the main floor apartment who transferred the utility information into their name from 01 May 2022 onwards. The landlord testified that she was seeking compensation for the total amount of the utility bills for the time period that the tenant was to have occupied the main floor apartment of her rental premises.

### **Tenant's Position**

38. Regarding the landlord's claim for payment of a utility bill in the amount of \$424.11 the tenant asked (paraphrase) "*why do I have to pay for something when I never lived there?*"

### **Analysis**

39. The landlord's claim for compensation for utilities is related to her claim for compensation for rent. Because her claim for payment of rent did not succeed, I find that her claim for payment of utilities also fails. I was not sufficiently convinced that the actions of the tenants alone were the cause of the landlord not having a tenant in place as of 01 April 2022.
40. Furthermore, I note that the actual amount of money owing on the utility bill for the rental premises, is **\$232.19** and not \$424.11 as was claimed by the landlord. From looking at the utility bills submitted, it appears as though the landlord did not initially pay the bill for April 2022 and because that amount of \$188.85 was still outstanding at 29 April 2022, this was added to the remaining April charge of \$43.34. I note that \$188.85 + \$43.34 = **\$232.19**.

### **Decision**

41. The landlord's claim for payment of utilities does not succeed in any amount.

## **Security Deposit (\$1,162.50)**

### **Landlord's Position**

42. The landlord applied to retain the full amount of the \$1162.50 security deposit as compensation for rent for the month of April 2022 that she did not receive from the tenant (\$1550.00). Proof of receipt for the security deposit on 14 March 2022 was provided (see page 1 on L#5).

## Tenant's Position

43. The tenant applied to have the full amount of the \$1,162.50 security deposit returned.

## Analysis

44. According to the landlord's and tenant's records, a security deposit in the \$1,162.50 was received on 14 March 2022. Administrative requirements for claims against security deposits are found within section 14, sub 10, 12 and 14 of the *Act*, which reads as follows:

*(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.*

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*(12) A landlord who does not make an application in accordance with subsection*

*(11) shall return the security deposit to the tenant.*

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*(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.*

45. Where the tenant was looking for her deposit to be returned since she never occupied the rental unit, the landlord applied to retain the security deposit against monies she believed owing for rent she never received and utility charges she incurred.

46. Because I found it unlikely on the balance of probabilities that the tenant was responsible for the rental unit not being occupied as intended, and the landlord made no other claim for why they should retain the full amount of the security deposit collected (e.g., such as for damage), I find that the tenant is entitled to the full return of her security deposit in the amount of \$1162.50.

## **Decision**

47. The landlord's application to retain the security deposit in the amount of \$1,162.50 does not succeed.
48. The tenant's application for the return of her security deposit succeeds in the full amount of \$1,162.50.

## **Hearing Expenses**

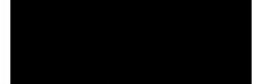
49. The landlord claimed the cost of the hearing application fee in the amount of \$20.00. This claim does not succeed as the landlord's other claims for compensation did not succeed.

## **Summary Decision**

50. The tenant is entitled to the full return of her security deposit in the amount of \$1,162.50.

11 August 2022

Date

  
Jaclyn Casler  
Residential Tenancies Tribunal