

Residential Tenancies Tribunal

Applications: 2022 No. 0298 NL
2022 No. 0379 NL

Decision 22-0298-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:08AM on 20 June 2022 via teleconference.
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 tenant confirming that the landlord was served of the claim against her (T#1) and a review of the tracking number provided confirmed the package was picked up on 03 May 2022 (T#2).
5. An affidavit of service was provided by the landlord (L#1) confirming that the tenant was served, by email, of the claim against her. Proof of service by email was also provided (L#2).
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 \$975.00 and a security deposit in the amount of \$731.25 was collected. A copy of the written rental agreement was provided (L#3).
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 the return of the security deposit in the amount of \$731.25.
9. The landlord is seeking the following:
 - An order for payment of rent in the amount of \$475.00;
 - An order for payment of utility fees in the amount of \$157.17; and
 - An order to use the security deposit of \$731.25 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 basement 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 was scheduled for the dispute specific to the main floor apartment (e.g., 2022-0281-NL and 2022-0400-NL).

Issue 1: Payment of Rent \$475.00

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 of the unit due to the Omicron COVID variant that was circulating at the time.
14. The landlord testified that her requirement for tenant's insurance is noted on page 4 of the rental agreement provided (L#3). She also testified that she cannot hand over the keys to a \$400,000 residential premises without proof of tenants insurance because this would be contrary to her property insurance.
15. The landlord testified that she is a registered real estate agent with 15 years experience. She testified that she explained her requirements to the tenant as a landlord "until she was blue in the face".
16. The landlord read highlights of her text chain between herself and the tenant (L#4) depicting a series of messages between the landlord and tenant on 29 March 2022. These messages started friendly and then turned combative after

substantial back and forth regarding tenants insurance. The tenant did not dispute the substance of this text exchange.

17. As per this text exchange, the landlord did not provide keys for the rental unit to the tenant. The landlord testified that she gave the tenant “a few days” after the text exchange to come forward with proper tenants insurance. The landlord also submitted a 10 page email chain dated 29 March 2022 said to be evidence that the tenant “was not truthful with the insurance company” (L#5).
18. 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 15 April 2022. Because of this, the landlord testified that she was seeking compensation in the amount of \$475.00 (½ months rent) from the tenant.

Tenant’s Position

19. The tenant testified that she was ready to move her family into the rental premises effective 01 April 2022. She had previously wanted to move her family into the rental premises at the end of February 2022 but was told by the landlord that the rental premises was “not yet ready”.
20. The tenant testified that she tried her best to purchase the tenants insurance required by the landlord. She testified that she asked the landlord to recommend what tenant insurance to secure when the landlord was not satisfied but that the landlord did not respond to this request.
21. The tenant testified that she was informed by her insurance provider that the basement unit was covered under the policy she secured for the main floor unit of the rental premises (that she was also renting). The tenant testified that she did not understand why the landlord was so concerned about tenants insurance since “tenant insurance only applies to the tenant’s belongings”.
22. The tenant testified to her many attempts at finding alternative solutions with the landlord, such as only taking occupancy of the main floor apartment while still paying for both units until the insurance question was resolved for the basement apartment. The tenant reiterated that she asked the landlord to recommend an appropriate insurance provider but that she got no response.
23. The tenant testified that she was confused and uncomfortable with the proceedings. She stated that she is an immigrant and that she is new in █.
█.
24. The tenant testified that after the landlord refused to give her the keys to the rental unit (as expected by the written rental agreement) that she would “cancel” if she could not get keys as expected. The tenant testified that this was because she had to move her family effective 01 April 2022 as they were required to vacate the Air B&B they had been renting. The tenant testified that her friend saw the rental unit listed on Facebook Marketplace as available 01 April 2022.

25. Regarding the landlord's claim for rent in the amount of \$475.00, the tenant asked (paraphrase) "why do I have to pay for something when I never lived there?"

Analysis

26. The parties disagreed 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 despite all her efforts to satisfy the landlord's requirements.

27. 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.

28. Regarding the tenant's claim that she should not be required to pay rent because she tried everything to satisfy the landlord's requirements (see paragraph 20-22), I find that the written evidence provided by the landlord (L#4) supports the tenant's claims. In particular, I note the following text message from the tenant (see 2 of 6):

"Anyway, its not any rush to the apartment, actually my niece and daughter is going home May 7 and back on July"

"That's why, im still paying it, I mean its no rush for that, no one will be using it, so don't worry no one will use it for now"

"So if u are no happy with that, ur choice of tenant insurance..."

29. In contrast, the landlord testified that she did not provide keys because the tenant failed to provide proof of acceptable tenant's insurance for the downstairs unit of the rental premises. Legally, this means that the landlord considered tenant's insurance a "material term" and because of this, the landlord was legally required to provide the tenant with notice of breach of material term in accordance with *Residential Tenancies Policy 07-004 Breach of Material Term*, whereby a landlord in this situation is required to follow subsection 20(2) of the Act which reads as follows:

Notice where material term of agreement contravened

(2) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes a material term of a rental agreement, the landlord may give the tenant written notice of the contravention, and if the tenant fails to remedy the contravention within a reasonable time after the notice has been served, the landlord may

give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises.

30. From reviewing the landlords responses in the text message chain provided, I find that landlord wrote, part way through the lengthy exchange on 29 March 2022 (see page 3 in 2 of 6 in L#4) that:

“My final decision is I need a policy that states both addresses and clearly says that it covers both units prior to Thursday [31 March 2022]”.

31. It was after this, that the tenant wrote (as noted in paragraph 28), and requested that the landlord identify her recommended provider for appropriate tenants insurance. However, as noted in the landlord’s testimony, she did not appear to have noticed this request from the tenant. Instead, the landlord proceeded to write multiple statements accusing the tenant of not being “truthful” and it was then, that the tenant wrote, as noted in paragraph 24, that she would cancel the rental agreement if she could not get keys on 31 March 2022.

32. At no point did the landlord follow through on the process required of her under section 20 of the Act and provide official notification from her side that the rental agreement was terminated as a result of the tenant’s failure to secure appropriate tenant’s insurance for the rental unit that is the subject of this dispute. According to 20(3) and 20(4) of the *Act*, providing such notice would require the following:

(3) Where the tenant gives a landlord notice under subsection (1) or the landlord gives a tenant notice under subsection (2) that a rental agreement is terminated, the notice shall be given

(b) not less than one month before the end of a rental period where the residential premises is

(i) rented from month to month,

(ii) rented for a fixed term, or

(iii) a site for a mobile home.

(4) In addition to the requirements under section 34, a notice under this section shall

(a) be signed by the person providing the notice;

(b) be given not later than the first day of a rental period;

(c) state the date, which shall be the last day of a rental period, on which the rental agreement terminates and the tenant intends to

vacate the residential premises or the date by which the tenant is required to vacate the residential premises; and

(d) be served in accordance with section 35.

33. However, the landlord did not provide any such formal notice. She also failed to work with the tenant who offered to pay for rent for both units while residing only in the main floor unit, for which proof of acceptable insurance was provided. Consequently, I find that the landlord's claim for compensation for half of April 2022 rent does not succeed as it appears she prevented a willing tenant from taking occupancy of her unit.

Decision

34. The landlord's claim for payment of rent in the amount of \$475.00 does not succeed.

Issue 2: Payment of Utilities \$157.17

Landlord's Position

35. Regarding the utility bill submitted in the amount of \$155.12 with an estimated meter reading date of 15 April 2022 (L#6) the landlord testified that this was for electric heat in the rental unit. She testified that she expected the tenant to pay this bill because the tenant had signed the rental agreement which was to be effective 01 April 2022 and that prior to that, she had tried to offer the rental unit to the tenant for 15 March 2022.

Tenant's Position

36. Regarding the landlord's claim for payment of a utility bill in the amount of \$155.12, the tenant asked (paraphrase) "*why do I have to pay for something when I never lived there?*"

Analysis

37. 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.

Decision

38. The landlord's claim for payment of utilities in the amount of \$157.17 does not succeed.

Security Deposit (\$731.25)

Tenant's Position

39. The tenant would like the full amount of the \$731.25 security deposit returned.

Landlord's Position

40. The landlord would like to retain the full amount of the \$731.25 security deposit as compensation for monies owed.

Analysis

41. According to the landlord's and tenants records, a security deposit in the \$731.25 was received on 14 March 22. Administrative requirements for claims against security deposits can be found within section 14, sub 10, 12 and 14 of the *Residential Tenancies 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.

(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.

42. The application and counter claim that were the subject of this hearing, were in response to competing requests from both parties (landlord and tenant) regarding the full amount of a security deposit previously collected. 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. Because the landlord's claims did not succeed, I find that the tenant is entitled to the full return of her security deposit.

Decision

43. The landlord's application to retain the security deposit in the amount of \$731.25 does not succeed.
44. The tenant's application for return of her security deposit succeeds in the amount of \$731.25.

Hearing Expenses

45. 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

46. The tenant is entitled to the full return of her security deposit in the amount of \$731.25.

10 August 2022

Date

Jaclyn Casler
Residential Tenancies Tribunal