

Residential Tenancies Tribunal

Application: 2022 No. 0302 NL

Decision 22-0302-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:13 AM on 4 July 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 (T#1) confirming that the landlord was served of the claim against him.
5. The details of the claim were presented as a month-to-month agreement wherein the applicant took occupancy on 05 February 2021 and retained possession of the unit until 15 April 2021. Monthly rent was set at \$750.00 and a security deposit in the amount of \$400.00 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. 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 tenant is seeking the following:
 - Rent Refunded in the amount of \$605.14;
 - Possessions returned in the amount of \$2,367.00; and
 - Security deposit refunded in the amount of \$400.00;

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 15, 32 and 33 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

10. The rental premises is an apartment building located at [REDACTED] [REDACTED]. The tenant resided in apartment [REDACTED]. The tenant was arrested on 17 March 2021 and was retained by the police for a period of 8 months.
11. The landlord testified that the tenant resided in the rental premises more than a year ago and asked why her case was not thrown out. The landlord confirmed that he received rent for the rental premises through to 15 April 2021 and it was confirmed that the tenant's application to this Tribunal was deemed complete on 11 April 2022 (e.g., in compliance with subsection 42(1) of the Act).

Issue 1: Refund of Rent (\$605.14)

Tenant's Position

12. The tenant testified that she should be returned rent that was paid in her name by her parents for April 1 – 15 2021 (\$375.00) as well as a portion of the rent that she had paid for March 2021 (\$230.14). The tenant testified that rent should be returned for a portion of March 2021 because the building superintendent allegedly accessed her rental unit and allowed people to take her belongings after the tenant was arrested on 17 March 2021.
13. The tenant was inconsistent in her relaying of past events and details regarding timelines and other specifics in her testimony changed frequently. The tenant acknowledged that at least some of her belongings remained in the rental premises until 15 April 2021. The tenant regularly talked over the landlord.
14. The tenant apologized for the inconsistencies in her testimony and mentioned that she was just detoxing and fuzzy on details.

Landlord Position

15. The landlord testified that he did not receive a formal termination notice from his tenant and that he believed that he was owed rent from the tenant. He strongly denied that he owed the tenant rent as any sort of refund.
16. The landlord testified that contacted by the tenant's mother on 04 April 2021 who informed him that the tenant was arrested. The landlord testified that he

requested that the mother pay ½ months rent for April 1 – 15 2021 to account for the period of time the tenant's belongings would remain in the rental unit until they are picked up.

17. The landlord testified that the tenant's ex-husband attended the rental premises and collected some of the tenant's belongings. The tenant's ex-husband then allegedly instructed the landlord to "throw out the rest".
18. The landlord testified that he at no point changed locks or had anyone change locks on the rental unit prior to 15 April 2021. The landlord regularly talked over the tenant.

Analysis

19. The tenant was inconsistent in her testimony but acknowledged that belongings of hers remained in the rental premises for at least a portion of April 2021. As such, her request for refund of rent does not succeed.

Decision

20. The tenant's request for return of rent does not succeed in any amount.

Issue 2: Return of Possession (\$2,367.00)

Tenant's Position

21. The tenant testified that a number of her personal items went missing after she was arrested and unable to return permanently to her rental unit. She testified that after she was released from jail, she requested that the landlord provide her with video footage of her former rental premises so that she could see what happened to her personal possessions as there was said to be a camera that points at her former door. The tenant testified that she was informed by the landlord that he does not keep video footage for that long.
22. The tenant submitted a list of personal items to the tribunal but did not speak to them in detail during the hearing other than to mention her missing make-up bag and a speaker (T#2). She submitted photos of the missing items to this tribunal, but nor did she speak to any of the items in detail, other to say that they were submitted (T#3). The tenant testified that she identified monetary values for the missing items because she purchased most of them herself.
23. The tenant called [REDACTED] as a witness. [REDACTED] previously resided in apartment [REDACTED] at the rental premises. She testified that she could not remember when she vacated the rental premises, but stated that she was at the rental premises the night that the tenant got arrested (17 March 2021). [REDACTED] testified that she saw the building superintendent go into the tenant's unit the following day, to go through the tenant's stuff and give things away.

24. The landlord testified that he evicted [REDACTED] and that her unit was located around the corner from where the tenant's unit was located so that there was no way she would have been able to see from her door what would have happened in the tenant's unit.
25. The tenant testified that the person who collected her belongings is the father of her children and not her ex-husband. She said she would have called him as a witness, but he is in Alberta.
26. The tenant testified that the superintendent did not like her and placed needles around her rental unit after she was arrested. The tenant also testified that this observation could be backed up by the police, however, she provided no documentary proof.

Landlord's Position

27. The landlord testified that he had heard rumours after the tenant was arrested, but that he had no firm idea where she was. He testified that he was contacted by the tenants' mother, who paid rent for the tenant until 15 April 2021 and also informed him that the tenant's ex-husband would be collecting her personal belongings.
28. The landlord testified that after a number of no-shows, the tenant's ex-husband finally attended the rental unit, took some items, and then informed the superintendent to throw away the rest.
29. The landlord called the building superintendent, [REDACTED] as a witness. She testified that her unit was next door to the tenants. She testified that her job is to keep the place clean and that she reports to her boss, the landlord on everything. The superintendent testified that she cleans and shows apartments. She also testified that she is not familiar with specific timelines or rental payments, as that is managed by the landlord.
30. Regarding the tenant's belongings, the superintendent testified that she was informed by the landlord that someone would be coming to pick up the tenant's belongings. Because [REDACTED] was uncomfortable with the tenant, she had someone attend with her to the pickup of the tenant's belongings by the tenant's representative.
31. The superintendent testified that she saw lots of dirty needles around the rental premises when waiting for the tenant's ex husband to pack things up. The superintendent testified that the ex-husband made a few trips to his vehicle before he said, "Get rid of what is left". [REDACTED] testified that she then got rid of what was left.
32. The tenant questioned [REDACTED] about how she got rid of what was left. [REDACTED] testified that there were a few things left, including a radio, a lamp, some

pieces of clothing, a sneaker, a fitted bedsheet, and some old tarnished fake jewelry. [REDACTED] testified that she gave some of these things away but threw most of it in the trash.

33. The landlord and tenant began talking and yelling over each other and failed to respond to requests for Order. The hearing was brought to a close.

Analysis

34. The tenant is seeking cost of replacement of possessions said to have been removed from the rental unit by the landlord's superintendent. However, inconsistencies in the tenant's testimony made it difficult to establish what exactly she was seeking and why.
35. I was sufficiently convinced by the landlord and his superintendent that they provided access to the unit as requested by the tenants designate (the father of her children/ the "ex husband") and then disposed of the remaining items were requested by the tenant's designate.
36. I accept the testimony from the landlord and designate (building superintendent) that they were not involved in any deliberate removal of the tenant's possessions prior to being requested to dispose of the tenant's possessions. For instance, I did not find that the landlord took the tenant's personal property for compensation, as is prohibited by section 33 of the *Act*.
37. I also note however, that the landlord and superintendent did not appear to have an agreement in writing for storage and disposal of the tenant's personal property (e.g., as is required by subsection 32(5) of the *Act*). Consequently, the landlord and superintendent were required to make an application to the Director of Residential Tenancies to "dispose of abandoned personal property" but they did not (e.g., as per section 32 of the *Act*). They did however testify that they were working from instructions of the tenant's mother and ex-husband.

Decision

38. The tenant's claim for an order for payment in compensation for missing possessions does not succeed in any amount.

Issue 3: Security Deposit \$400

Relevant Submissions

39. Both parties agreed that a \$400.00 security deposit was collected by the landlord.

Tenant Position

40. The tenant requested that the full amount of the security deposit be returned. She testified that it should not be applied to January 2021 rent because she was specific with the landlord that she only needed a place from February 2021 onwards IF the place was available. She testified that she never asked the landlord to hold the apartment for her.

Landlord Position

41. The landlord testified that he should be permitted to retain the security deposit as rent for January 2021 because he held the rental unit for the tenant for majority of January 2021 for the tenant so that she could reside there from February 2021 onwards.

Analysis

42. 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.

43. A \$400.00 security deposit was collected and the landlord did not make his own application to this tribunal so that he could retain any of these monies. Nor did the landlord testify to any particular damage or reason for why he was requiring the security deposit after the tenant vacated the rental unit. He only stated that he wished to apply the security deposit to "rent for January 2021".

44. The tenant did however formally apply for the full amount of the security deposit be returned to her. Because the landlord had no counter application and no convincing reason for why he should retain it, the tenant's request succeeds in the full amount.

Decision

45. The landlord shall return the full amount of the \$400.00 security deposit to the tenant.

Summary of Decision

46. The tenant is entitled to an order for the return of her security deposit in the full amount of \$400.00.

06 July 2022

Date



Jaclyn Casler
Residential Tenancies Tribunal