

Residential Tenancies Tribunal

Application 2022-No.418-NL
2022-No.481-NL

Decision 22-0418-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:03 a.m. on 27-July-2022.
2. The applicants, [REDACTED] and [REDACTED], are represented by [REDACTED] (LL#01) authorized representative form provided, and she will hereinafter be referred to as "the tenant's authorized representative." She attended by teleconference.
3. The respondents, [REDACTED] and [REDACTED], are represented by [REDACTED] (LL#01) authorized representative form provided. She will hereinafter be referred to as "the landlord" and she attended by teleconference.
4. The tenants presented a witness, [REDACTED], he will hereinafter be referred to as "the tenants' witness," and he attended by teleconference.

Preliminary Matters

5. The landlord served the tenants notice (LL#02) of the hearing on 14-July-2022 by email. The tenants' authorized representative confirms receipt of notice.
6. The tenants served the landlord with notice (TT#03) of the hearing on 31-May-2022. The landlord confirms receipt of notice.
7. The landlord rents the house from the homeowner and she is the property manager, she then rents the two additional rooms. She is the landlord of those tenants. She pays rent for the entire house to the homeowner and she collects rent from the other tenants who she rents to.

Issues before the Tribunal

8. Tenants are seeking:
 - Security deposit refunded \$325.00

Landlords are seeking:

- Validity of termination notice
- Rent \$690.00
- Late fees \$75.00
- Compensation for damages \$360.00
- Security deposit applied (\$325.00)

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
10. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 7: Provision of rental agreement and information, Section 14: Security deposit, Section 15: Fee for failure to pay rent, Section 18: Notice of termination of rental agreement, and Section 24: Notice where tenant contravenes peaceful enjoyment and reasonable privacy.

Issue 1: Validity of termination notice

Landlord's Position

11. The landlord said that she entered into a written rental agreement (LL#03) with the tenants for a room in the house. The tenants moved in 01-June-2021 and they moved out 30-April-2022. They pay \$690.00 on the first day of each month and this includes both rent and utilities. They paid a security deposit of \$325.00 on 10-May-2022 and the landlord is still in possession.
12. The landlord said that she rents two of the rooms in the house to offset her cost. She said that there were ongoing issues with the tenants fighting late at night and that the other tenant had complained to her. She decided to give the tenants a termination notice for interference with peaceful enjoyment. She signed and dated the notice on 26-April-2022 with a termination date of 30-June-2022. She said that she served the notice electronically to the tenants' email and also by text on 27-April-2022.
13. The landlord said that the other tenant had moved because of the issues with these tenants. She said she gave them until the end of June because she knew she had to give a minimum of 5 days, but didn't want to kick them out with nowhere to go. She gave two months so that they could find a place. She also gave the two months so that she could find new renters. The other tenant had moved and she was already covering extra rent costs because of that person moving.
14. The landlord said that the tenants gave notice on 28-April-2022 and then moved the end of April. She said that they are obligated to give a month's notice and that they owe her rent for the month of May. She said that they didn't give her enough notice to clean, advertise and rent the room. The landlord provided this text thread (LL#05) and in the thread she tells them on 28-April-2022 that they would still owe rent for May.

15. The landlord is questioning the validity of the tenant's notice.

Tenants' Position

16. The tenants' authorized representative agrees with the terms of the rental agreement as stated by the landlord.
17. The tenants' authorized representative said that the tenants do not contest the peaceful enjoyment termination and confirm that they received the notice as stated. They found a place to live and decided to move right away. The tenants gave notice that they would be leaving on 29-April-2022.
18. The authorized representative said that it is her understanding they are no longer in a rental agreement with the landlord once she has terminated the agreement and that as long as they gave the notice before the end of the month, then the notice is valid.
19. The authorized representative said that the landlord didn't even respond to the notice until 04-May-2022.

Analysis

20. I find that the tenant's notice is not valid. The tenants are obligated to give the landlord of notice of termination. Section 18 of the *Residential Tenancies Act, 2018*, states:

Notice of termination of rental agreement

18. (1) A tenant shall give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises

- (a) *not less than 7 days before the end of a rental period where the residential premises is rented from week to week;*
- (b) *not less than one month before the end of a rental period where the residential premises is rented from month to month; and*
- (c) *not less than 2 months before the end of the term where the residential premises is rented for a fixed term.*

21. The landlord had served the tenants with notice that their agreement was terminated 30-June-2022. The landlord is obligated to give at least 5 days, as per Section 24, of the *Residential Tenancies Act, 2018*, as follows:

Notice where tenant contravenes peaceful enjoyment and reasonable privacy

24. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes statutory condition 7(a) set out in subsection 10(1), the landlord may give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises on a specified date **not less than 5 days after the notice has been served.**

22. It is completely acceptable to give the tenants more notice. It is also within reason that the tenants may want to secure new housing. This however, has to be done with compliance to the *Act*. Therefore, the tenant has to give a full month's notice. This must be done before the end of the first day of the rental period and have a termination date for the last day of the rental period. I find that the landlord is correct and that the tenant's should have given notice for the end of May.

Decision

23. The notice given to the landlord by the tenants was not valid and that the earliest notice they could have given was for 31-May-2022.

Issue 2: Rent \$690.00

Landlord's Position

24. The landlord stated that when the tenants gave her notice, she explained that they are obligated to give her a month's notice and they owe her \$690.00 for May. She provided a rent ledger indicating that rent was not paid for May (LL#06).

25. The landlord is seeking May's rent.

Tenants' Position

26. The tenants' authorized representative was under the understanding that the tenants were only obliged to give notice before the end of the month and that the contract is void once the landlord gave notice.

Analysis

27. I accept the testimony and evidence of both parties that the tenants didn't pay May rent.

28. As shown in paragraph 23, as per Section 18 of the *Residential Tenancies Act, 2018*, the earliest notice that the tenants could have given is for the end of the May rental period. The tenants are therefore responsible for the payment of rent, for that rental period, and shall pay to the landlord \$690.00.

Decision

29. The landlord's claim for rent succeeds in the amount of \$690.00

Issue 3: Late fees \$75.00

Landlord's Position

30. The landlord is seeking the maximum amount of late fees because rent is in arrears beginning 02-May-2022.

Analysis

31. Section 15 of the *Residential Tenancies Act, 2018* states:

Fee for failure to pay rent

15. (1) Where a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister.

The minister has prescribed the following:

Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed:

- (a) *\$5.00 for the first day the rent is in arrears, and*
- (b) *\$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00.*

32. As the rent has been in arrears since 02-May-2022, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

33. The landlord's claim for late fees succeeds in the amount of \$75.00.

Issue 4: Compensation for damages \$360.00

Landlord's Position

34. The landlord provided the photos (LL#07) of the room prior to the tenant moving in May 2021. She points out that the walls are not damaged in the picture. She said that the walls were painted 2 or 3 months before the tenants moved in.
35. She also provided the pictures dated for May 2022 (LL#07) showing dirt on the walls, holes from the t.v. mount and damages to the window from the air conditioner.
36. The landlord said that the room was dirty and there was a foul smell. She said that they had to wipe down the walls and it took 3 cleanings to clean the floor.
37. The landlord said that it took 8 hours personal time plus cleaning supplies totaling \$120.00 to clean the room.

38. The landlord said there was something like rubber on the window and it took 2 hours personal time to clean the window and paint, she is seeking \$40.00 to do this work. She said she isn't seeking to repair damages to the window that already existed, but she is seeking compensation for damages caused by the air conditioner.
39. The landlord said it took 4 hours to sand and patch the holes from the t.v. mount. She said she wasn't able to match the paint and has put a mirror there to cover the patch job. She is seeking \$170.00 for this work.
40. The landlord said that there is still work to be done on the room. She said that she has had tenant's move in the past and had to do some cleaning, but the work required on this room was much more intense.

Tenants' Position

41. The tenants' authorized representative said that in her experience, the mounting of a t.v. should be considered normal wear and tear.
42. The tenants' witness said that he helped the tenants move. He said that they swept-up and mopped the room. He said that the holes in the walls caused by the t.v. mount should have required minimal work and that if the room was just painted the color should be easy to match.
43. The tenants' witness said that the window was falling out and he put a screw in it to hold it in place.
44. The tenants' authorized representative said that the landlord's evidence (LL#05) shows the tenants' notice and in it they ask for their security deposit back and say that within 10 days of them leaving the landlord should have assessed the damages and returned the deposit and they didn't hear anything back within the 10 days.

Analysis

45. I accept the landlord's evidence showing that the room was in good condition at the time the tenant's moved in. The landlord is seeking compensation for personal time for work she was required to complete to prepare the room for the next renters.
46. The photographic evidence submitted by the landlord shows that the walls were dirty and required cleaning. I accept that she required 8 hours to do this work. This board considers \$21.20 an acceptable rate for personal time. $8 \times \$21.20 = \169.60 . The landlord is claiming \$120.00 and this is the maximum rate that she can be awarded. Therefore I find the tenant's shall compensate the landlord \$120.00 for cleaning.
47. The photographic evidence clearly shows that there is a black rubbery substance on the window. The landlord claimed 2 hours to clean and paint the window and I find that amount of time reasonable. $2 \times \$21.20 = \42.40 . The landlord is claiming \$40.00 and this is the maximum rate that she can be awarded. Therefore I find the tenant's shall compensate the landlord \$40.00 for cleaning and painting the window.

48. The photographic evidence also shows the holes from the t.v. mount. The landlord said that this required 4 hours to patch this work. I also accept this amount of time as reasonable. $4 \times \$21.20 = \84.80 . The landlord is claiming \$170.00. However the approved rate times 4 hours is equivalent to \$84.40 and I find the tenants shall compensate the landlord \$84.80.
49. The tenants shall pay to the landlord \$244.80 for cleaning and repairs as follows:

- Cleaning \$120.00
- Clean and paint window 40.00
- Repair from t.v. mount 84.80
- Total \$244.80

Decision

50. The tenants shall reimburse the landlord \$244.80 for repairs and cleaning.

Issue 5: Security deposit applied \$325.00

Landlord's Position

51. The landlord opened a claim within 10 days of notification of the tenant's giving her notice that they were applying for a return of the security deposit. She is seeking to retain the security deposit against monies owed.

Analysis

52. As it has been shown in paragraphs 29, 34 and 51 that the tenants are responsible to compensate the landlord \$1,009.80, as follows:

- Rent \$690.00
- Late fees 75.00
- Damages 244.80
- Total \$1,009.80

53. The landlord shall retain the security deposit against monies owed.

Decision

54. The landlord's claim for the security deposit succeeds in the amount of \$325.00.

Issue 6: Security deposit retained \$325.00

Tenants' Position

55. The tenants' are seeking refund of the security deposit.

Analysis

56. As it has been determined that the landlord shall retain the security deposit against monies owed as per paragraph 55.

Decision

57. The tenants claim for return of the security deposit fails.

Summary of Decision

58. The notice given to the landlord by the tenants is not valid.

The tenants shall pay to the landlord \$684.80 as follows:

| | |
|-------------------------------|-----------------|
| • Rent | \$690.00 |
| • Late fees..... | 75.00 |
| • Damages | 244.80 |
| • Less security deposit | <u>(325.00)</u> |
| • Total | <u>\$684.80</u> |

The landlord shall retain \$325.00 of the security deposit for rent, repairs and cleaning.

August 2, 2022

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office