

Residential Tenancies Tribunal

Application: 2022 No. 0442 NL

Decision 22-0442-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:41 AM on 4 July 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 "the tenant", participated in the hearing.
4. An affidavit of service was provided by the landlord (L#1) confirming that the tenant was served by email of the claim against her. The landlord testified that he used the email address used for communication with the tenant. A copy of proof of service was provided in the same document referenced above.
5. The details of the claim were presented as an intended month-to-month rental of a furnished room with everything included in the monthly rent of \$575.00. The tenant was to take occupancy from 01 May 2022 but this did not occur. A \$400 security deposit 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 that 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 payment of rent in the amount of \$575.00.

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 7, 9 and 18 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

10. The rental premises is a furnished room in a shared apartment in the main floor of a house located at [REDACTED]. The apartment is occupied by female international students only.
11. The tenant submitted an application (2022-0332-NL) to this tribunal on 26 April 2022 for return of the \$400.00 security Deposit. A written submission hearing date of 27 May 2022 was identified for return of the security deposit if the landlord did not submit a counterclaim within 10 days of being served. The tenant submitted an affidavit (T#1) of service declaring that she served the landlord on 09 May 2022. Her case was then discontinued on 26 May 2022 after she notified the tribunal that the full amount of her security deposit had been returned.

Issue 1: Payment of Rent (\$575.00)

Landlord's Position

12. The landlord submitted evidence of a text exchange with the applicant where she requested that the landlord keep the room for her for a 01 May 2022 move in (L#2). A security deposit was then collected and the landlord sent her the official rental agreement to sign electronically on the same day (L#3). Because lease was sent electronically, the landlord was able to provide the service history of the document which indicates the lease was viewed by the tenant on 30 March 2022 but not signed (L#4).
13. The landlord testified that the next communication he heard from the tenant, was a text dated 24 April 2022 where she wrote: "*Due to unfortunate circumstances I won't be able to move in the house. I apologize for the inconveniences causes. When can I expect my damage deposit back*" (L#5). To which the landlord responded that he would not return the deposit due to late notice. The tenant then wrote: "*I haven't signed a lease yet*". The landlord testified that he promptly listed the apartment for rent again and submit proof of the same (L#6).
14. The landlord testified that despite his best efforts, he was only able to secure a new tenant from 01 June 2022 onwards. Because the rental unit is for female international students only, the landlord testified that he was not able to rent the unit to just anyone and had to select the new tenant carefully. The landlord stated that he is looking for rent in the amount of \$575.00 for May 2022 as

compensation because he had no tenant during that time due to the late notice of non-renting that he received from the tenant.

15. As noted in paragraph 11 above, the tenant then proceeded to file an application with this Tribunal for return of her security deposit. The landlord testified that he returned the full security deposit to the tenant on 25 May 2022 because he “could not attend” the original hearing date” of 27 May 2022 due to personal commitments. Proof of this return of payment was provided (L#6). The landlord testified that he submitted his own application to this Tribunal after receiving notice of the tenant’s dispute.

Tenant’s Position

16. The tenant accepted the testimony and evidence provided by the landlord regarding the timeline of events. She agreed that she reached out through a friend to rent the furnished room on 07 March 2022 and stated that she attended the rental premises to view the room on the same day. The tenant testified that she became concerned during this visit about the potential for noise in the furnished room and that she was not satisfied with the landlord’s alleged response that “he cannot do anything about the noise”.
17. The tenant testified that she followed up with the landlord about her concerns with the noise as shown in text the following day (as shown in L#2) and was unsatisfied with his response. The tenant also acknowledged reviewing the lease on 30 March and then providing notice on 24 April 2022 that she would not be residing in the agreed upon furnished room from 01 May 2022 onwards.
18. When questioned why she only provided notice on 24 April 2022, the tenant:
 - Reiterated her concerns with noise that she flagged on 07 March 2022;
 - Stated that she needed time to think;
 - Stated that she was busy with school;
 - Testified that she had intended to sign the lease when she moved in;
 - Testified that the monthly rent being claimed by the landlord is \$25 more than the \$550.00 monthly rent she previously agreed to; and
 - Testified that she confirmed a new rental, where she is currently residing, on 23 April 2022.

Analysis

19. The landlord established that he maintained full records of his communications with the tenant and that he promptly responded to all requests of him. He submitted comprehensive evidence of these communications to this tribunal and also provided consistent testimony.

20. Where the tenant appeared to believe she was not required to follow through with a rental agreement since “she had not signed anything”, this is not consistent with subsection 9(1) of the Act which states:

Landlord and Tenant Relationship

9. (1) A relationship of landlord and tenant takes effect when the tenant is entitled to use or occupy the residential premises whether or not the tenant actually uses or occupies it.

21. This means that the tenant and landlord had a landlord and tenant relationship based on the tenant writing (as shown in paragraph 12) that she wanted to reside in the landlord’s furnished bedroom and also submitted a security deposit for the same. This relationship existed in absence of a signed rental agreement (e.g., lease).

22. The landlord was satisfying his obligations under subsection 7(3) of the Act when he provided the tenant with an electronic copy of the lease to sign. This section of the Act reads as follows:

Provision of rental agreement and information

(3) Where a landlord and tenant enter into an oral or implied rental agreement, the landlord shall provide the tenant with a written notice containing the information prescribed in the regulations within 10 days after entering into the rental agreement, and where requested by the landlord, the tenant shall sign an acknowledgement of receipt.

23. Regarding the landlord’s request for payment of rent in the amount of \$575.00 for May 2022 as a result of the tenant only providing notice on 24 April 2022 that she would not be occupying the rental premises, I find that the tenant did not provide proper notice of termination of the rental agreement as is required by clause 18(1)(b) of the Act which reads as follows:

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

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

24. As such, I find that the landlord’s request for payment of rent in the amount of \$575.00 is a valid request.

Decision

25. The landlord's request for payment of rent succeeds in the amount of \$575.00.

15 July 2022

Date

Jaclyn Casler
Residential Tenancies Tribunal