

## Residential Tenancies Tribunal

Applications 2022 No. 0470 NL  
2022 No. 0505 NL

Decision 22-0470-00

Jaclyn Casler  
Adjudicator

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### Introduction

1. The hearing was called at 11:14AM on 26 July 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "tenant1", participated in the hearing.
3. The applicant, [REDACTED], hereinafter referred to as "tenant2", participated in the hearing.
4. The respondent, [REDACTED], as represented by [REDACTED], hereinafter referred to as "the landlord", participated in the hearing. The landlord identified himself as property manager for the homeowner.
5. An affidavit of service was provided by tenant1 (T#1) and tenant2 (T#2) confirming that both individuals served the landlord with notice of the hearing by email. The landlord did not submit an affidavit of service for his own counter claim. However, both tenant1 and tenant2 testified that they received notice of the landlord's claim against them and were willing to participate in his claim.
6. The details of the claim were presented as an intended fixed term 12 month tenancy for which a written rental agreement was provided (T#3). Monthly rent was to be \$1,000.00 and a security deposit in the amount of \$750.00 was collected. The tenants briefly occupied the rental premises from 30 August 2021 before returning the keys on 08 September 2021.
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. In these proceedings the standard of proof 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 tenants are seeking the full return of their security deposit in the amount of \$750.00.
9. The landlord is seeking the following:
  - Payment of rent in the amount of \$2,000.00; and
  - An order for the security deposit to be retained in the amount of \$750.00.

## **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 sections 14 and 19 of the *Act*.

## **Preliminary Matters**

12. The tenants are brothers and students.
13. The rental premises is a basement apartment located at [REDACTED] [REDACTED]. The tenants agreed to rent the in middle July 2021 and paid their security deposit after receiving a video walk through of their rental premises. They provided proof of payment for \$750.00 paid on 21 July 2021 (T#4).
14. The rental premises was vacated on 08 September 2021 after the tenants issued the landlord with a notice of termination under section 21 of the *Act*, *Premises Uninhabitable* on 06 September 2021 (T#6).

### **Issue 1: Payment of Rent (\$2,000.00)**

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

15. The landlord submitted a copy of his rental ledger (L#1). He testified that he received the \$1,000.00 rent payment for September 2021 and that he is seeking payment of rent for October 2021 and November 2021 because the rental premises was vacant during that time as a result of the early departure of the tenants. When asked to describe the state of the rental premises, the landlord said it was "ok".
16. The landlord testified that the rental premises were vacant prior to the tenants taking occupancy on 30 August 2021. He testified that it was inappropriate for them to cancel their tenancy based on premises uninhabitable because they did not follow the process required for premises uninhabitable by making a request for repairs. The landlord also testified that a designation of "uninhabitable" can only be made by a certified professional.

17. The landlord testified that he completed a move in condition inspection with the tenants and that they agreed to live there. He testified that his practice is to record video while conducting move in's. He also testified that he would personally live in the rental premises. When asked if he noticed a change in the condition of the rental premises after the tenants vacated, the landlord testified that it was "pretty much the same" and that the condition of the premises could only become better through "major renovations".
18. The landlord said that he had evidence related to the move in condition inspections, but that he did not submit it. The rent ledger was the only documentary evidence submitted to this tribunal.
19. The landlord then testified that he did not recall receiving a termination notice from the tenants. He testified that he met the tenants' to collect their keys on 08 September 2021 because he is responsible for maintaining the rental premises. The landlord testified that he believed the tenants delayed bringing their claim forward because they wanted to "*be sure that [the landlords] memory was poor*".

### **Tenant's Position**

20. Tenant1 testified that he and brother arrived at the rental premises on 30 August 2021 expecting that everything should be good. Tenant2 testified that after viewing the rental premises by video in July, they requested that the landlord clean the premises. Tenant2 rejected the landlord's claim that a move in condition inspection video was conducted when they arrived.
21. Tenant2 testified that he reached out to the landlord and requested that the rental premises be cleaned before they pay rent for September 2021. He testified that a single cleaner arrived at the rental premises and cleaned only a toilet as requested by the landlord. Tenant2 testified that he then had to contact his own cleaners to get them to help clean full rental unit. Tenant2 testified that they did not provide pictures of the state of the rental unit because he and his brother are trying for the return of the security deposit and are not seeking any other compensation at this time.
22. Tenant2 testified that the rental premises was unlivable and that he only continued to live there with his brother for a week because they had no where else to go. He testified that there were dead insects everywhere and that being in the premises made him ill. Tenant2 submitted a written summary of concerns to this tribunal (T#5) and also testified that he and his brother have been in communication with Residential Tenancy staff since 06 September 2021.
23. Tenant2 testified that they are not required to pay rent for October 2021 or November 2021 because they issued a termination notice to the landlord on 06 September 2021 for Premises Uninhabitable under section 21 of the Act (T#6). Proof of email service of this notice was also provided (T#7).

24. Tenant2 testified that he and his brother delayed bringing their case forward because their grandmother died and they were busy with other commitments. Tenant2 emphasized that he and his brother paid rent in the full amount of \$1,000.00 for September 2021 despite only residing there for a week.

## **Analysis**

25. The landlord as the applicant in this case for payment of rent in the amount of \$200.00 was required to establish on the balance of probabilities that he was entitled to be paid in the amount claimed. Where the tenants had signed a fixed term rental agreement and had been expecting to reside in the rental premises until 31 August 2022, it is generally reasonable for the landlord to expect compensation. Regarding this particular dispute however, the landlord did not provide any evidence to suggest that he formally opposed the section 21 notice of termination that he received on 06 September 2022. Furthermore, as noted in paragraph 19, the landlord met the tenants to receive their keys and regain possession of the rental unit.

26. Consequently, I found that the landlord accepted this early termination of the rental agreement, thereby forfeiting any claim to compensation for unpaid rent. Had the landlord provided any documentary evidence and or testimony that indicated he opposed the termination notice at the time, I could be convinced that he opposed the early termination notice. But no such evidence was provided, and so I consider this as evidence that the early termination was accepted.

27. Additionally, I must note that I found the landlord to be contradictory in his testimony. First he acknowledged being served notice of termination and then he denied receiving formal notice of termination from the tenant. He also testified that the rental premises were "ok" and then he said that the state of the unit could only be improved by major renovations.

28. As such, for all reasons discussed above, I find that the rental agreement between the landlord and tenants was effectively terminated on 08 September 2022 when landlord accepted their keys. Consequently, I find that the landlord's claim for rent for the month of October and November 2021 in the amount of \$2,000.00 does not succeed.

## **Decision**

29. The landlord's claim for rent does not succeed.

## Issue 2: Security Deposit (\$750.00)

### Relevant Submissions

30. The tenants would like their security deposit returned in the full amount of \$750.00 and the landlord has applied for an order to retain the security deposit in the full amount of \$750.00.

### Analysis

31. The tenants are requesting that their security deposit be returned but this has been countered by the landlord who applied to keep the full amount of the security deposit for payment of rent for October 2021 and November.
32. 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.*

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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.*

33. Where the landlord's claim for payment of rent has not succeeded and he has no other claims against the security deposit, the tenants' claim for return of their security deposit succeeds in the full amount of \$750.00.

### Decision

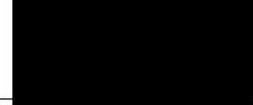
34. The tenants' claim for the return of their security deposit succeeds in the full amount of \$750.00.

## **Summary of Decision**

35. The tenants are entitled to the return of their security deposit in the full amount of \$750.00.

10 August 2022

Date

  
Jaclyn Casler  
Residential Tenancies Tribunal