

Residential Tenancies Tribunal

Application: 2022 No. 0494 NL

Decision 22-0494-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:04 AM on 4 August 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the tenant", participated in the hearing.
3. The respondent, [REDACTED], as represented by [REDACTED], and hereinafter referred to as "the landlord", participated in the hearing. The landlord testified that he is the property manager for the rental premises.
4. The tenant testified that an affidavit of service was submitted to this tribunal, however it could not be located. She testified that the landlord was served in person on 05 July 2022.
5. The details of the claim were presented as a fixed term agreement from 01 July 2021 through to 30 June 2022. Monthly rent was \$1,300.00 and a security deposit in the amount of \$1,300.00 was collected. A copy of a written rental agreement was not provided.
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 tenant is seeking the following:
 - Refund of rent in the amount of \$200.00; and
 - Return of the \$1,300.00 security deposit.

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* (the *Act*).
9. Also relevant and considered in this case is section 14 of the *Act*.

Preliminary Matters

10. The rental premises is single family dwelling located at [REDACTED]
[REDACTED].

Issue 1: Return of Rent (\$200.00)

Tenant's Position

11. The tenant indicated that she resided in the rental premises with her small child. She testified that she experienced issues with rodents at the rental premises from the day that she moved in. These issues remained on the exterior of the household until 8 April 2022 when the tenant discovered rat feces in her pantry.
12. The tenant testified that she texted the landlord on 11 April 2022 to provide her 30 day notice that she would be vacating the rental premises due to rodents, as well as the bugs and smells when it would rain. She testified that the landlord apologized for the issues with the rental premises. When asked if she submitted proof of her written exchanges, the tenant testified that she had them printed out and ready to submit, but was told that she did not need to submit.
13. Regarding her claim for \$200.00, the tenant testified that she had agreed with the landlord to pay half (\$650.00) of the \$1,300.00 rent for May 2022 as a result of her providing notice to terminate on 11 April 2022. The tenant testified that she never paid the remaining \$400.00 in rent because when she arrived at the rental premises to return keys on 02 May 2022, she saw the landlord putting a For Sale sign on the lawn. The tenant testified that this said to her, that she no longer had to pay ½ of May since the property was no longer a rental premises.

Landlord's Position

14. The landlord testified that he sympathised with the tenant because she was living in the rental premises with her young daughter. The landlord agreed with the testimony provided by the tenant and testified that he never put in writing the tenants' obligations under the lease when she texted on 11 April 2022 to inform him that she would be vacating the rental premises within 30 days.
15. The landlord testified that he has assumed the written fixed lease (running until 30 June 2022) would override everything else. Regarding the tenant's claim for

return of \$200.00, the landlord testified that he did not recall being paid the \$200.00.

16. The landlord testified that he continues to act as property manager for the rental premises because the house did not sell and he was instructed by the owner to secure new tenants. The landlord testified that the rental premises has been occupied since July 2022.

Analysis

17. According to **Residential Tenancies Policy 13-002 Rental Rebate**, when a service is discontinued, or where an accommodation becomes unavailable, the value of the service or accommodation may be considered a rental increase. The value of this, may be determined by the Residential Tenancies division. The tenant in this dispute, is seeking refund of \$200.00 rent that she paid for a portion of May 2022.
18. Evidence was received that the landlord and tenant agreed a fixed term lease was in place running until 30 June 2022. They also agreed that the tenant sent a 30 day cancellation notice by text to the landlord on 11 April 2022. Where the tenant testified that she believed she was not required to pay rent for ½ May 2022 because she saw that the house was listed for sale on 02 May 2022, the landlord testified that he was entitled to compensation for rent for May 2022 as a result of the tenant's early termination of her fixed term rental agreement.
19. Where the tenant testified that she cancelled her tenancy early because of rodents, she did not provide any documentation related to the rodent situation in the house and yard of the rental premises, and nor did she provide documented proof of her communications with the landlord wherein she claimed he "apologized" for the experience. In order to justify such an early cancellation of a rental agreement, the tenant is required to have a certified professional deem her rental premises "uninhabitable" and submit an associated Notice of Termination under section 21 of the Act, for *Premises Uninhabitable*. However, she did not do this, and so I find that she is not entitled to the return of the \$200.00 in rent that she claimed to have paid.

Decision

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

Issue # 2: Security Deposit (\$1300.00)

Relevant Submissions

21. Evidence of a \$1300.00 security deposit having been paid to the landlord in July 2021 was provided by the tenant (L#1). The tenant testified that she tried for multiple weeks after she vacated the rental premises to have the security deposit

returned to her, and claimed that the landlord stated that he had to talk to the owner.

22. The landlord testified that he was entitled to retain the security deposit because the tenant terminated a fixed rental agreement early.

Analysis

23. The tenant provided proof of a security deposit having been collected in the full amount of rent (e.g., \$1,300.00). This is in excess of the maximum of $\frac{3}{4}$ of the amount of rent payable for the first month (e.g., \$975.00) permitted under 14(1)(b) of the *Act*. As such, I find that the difference of \$325.00 will be considered a credit against rent monies owed to the landlord for the remainder of the previously agreed upon $\frac{1}{2}$ months rent for May 2022.
24. Regarding the remaining \$975.00, 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.

25. The landlord did not submit a counterclaim for retaining the tenant's security deposit. Where the landlord has made no counterclaim for retaining the security deposit, I find that the remaining \$975.00 security deposit shall be returned to the tenant.

Decision

26. The tenant's claim for return of the security deposit succeeds in the amount of \$975.00.

09 August 2022

Date


Jaclyn Casler
Residential Tenancies Tribunal