

## Residential Tenancies Tribunal

Application 2022 No. 0510 NL

Decision 22-0510-00

Jaclyn Casler  
Adjudicator

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### Introduction

1. The hearing was called at 9:15 AM on 21 September 2022 via teleconference.
2. The applicant, [REDACTED], as represented by [REDACTED] and hereinafter referred to as "the landlord", participated in the hearing.
3. The respondent, [REDACTED], hereinafter referred to as "tenant1", did not participate in the hearing. Nor did the respondent, [REDACTED], who is hereinafter referred to as "tenant2".
4. The landlord submitted an affidavit of service confirming that the tenants were both served electronically of the claim against them on 20 July 2022. She also provided proof of service, along with system proof of delivery for both emails (see pages 1 – 3 in L#1). The landlord testified that she knew to serve electronically to these emails because they were provided by the tenants for communication.
5. The details of the claim were presented as a month-to-month rental agreement operating since 14 January 2021. Monthly rent was originally set at \$1024.00, but then reduced to \$791.00 based on proof of income. A \$300.00 security deposit was collected by the landlord on 27 January 2021.
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. 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**

7. The landlord is seeking the following:
  - Payment of rent in the amount of \$2,225.00;
  - Compensation for damages in the amount of \$1,121.25;
  - An order to retain the security deposit in the amount of \$300.00; and
  - Vacant possession of the rental premises.

## **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 are sections 10, 14 19 of the *Residential Tenancies Act, 2018*.

## **Preliminary Matters**

10. The tenants were not present or represented at the hearing and I was unable to reach them by telephone. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*.
11. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, where the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as they have been properly served.
12. As the tenants were properly served, and any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.
13. The landlord amended her application to remove the request for an order of vacant possession because she regained possession of the rental unit on 21 June 2022 when she received an email from tenant2 informing her that the keys had been left in the mail box.
14. The landlord testified that she made an application for disposal of vacant possessions on 13 July 2022 (see file # 2022-105) because even though the tenants returned possession of the rental premises on 21 June 2022, the rental premises could not be occupied for July 2022 because of the amount of personal possessions that were left behind by the tenants.

## **Issue 1: Payment of Rent (\$2,225.00)**

### Landlord's Position

15. The landlord testified that the rental premises is a three bedroom single family dwelling, row housing dwelling at [REDACTED] and submitted a copy of her rental ledger dated June 2022 (L#3). According to this ledger, the tenants owed \$1,434.00 in rent through to 30 June 2022. The landlord testified that she is also seeking compensation for rent for the month of July 2022 in the amount of \$791.00 because she was unable to rent to new tenants during that month as a result of the possession left behind and other damages caused by the tenants.
16. The landlord referred to the three standard termination notices that were issued to the tenant under section 19 of the Act for non-payment of rent (L#4). The most recent notice was issued on 15 June 2022 and identified a move out date of 28 June 2022.

### **Analysis**

17. I accept the landlord's testimony and evidence that the rental premises was vacated on 21 June 2022 and that the final termination notice for non-payment of rent was issued to the tenants on 15 June 2022 with an identified move out date of 28 June 2022. I also accept the landlord's testimony and evidence related to having to file for an order to dispose of abandoned possessions, as was noted in paragraph 14, and that this is why the landlord is seeking compensation for rent for the full month of June 2022 and July 2022, despite having issued a June 2022 notice of termination requiring that the tenants vacate by 28 June 2022.
18. Consequently, I agree with the landlord and find that she is entitled to payment in the full amount of compensation claimed since she was not immediately able to secure new tenants as a result of the time required to clean up once she regained possession on 21 June 2022.

### **Decision**

19. The landlord's claim for rent succeeds in the amount of \$2,225.00.

## **Issue 2: Compensation for Damages \$1,121.25**

### Relevant Submissions

20. The landlord submitted a copy of the move-out condition inspection report that was conducted after she retook possession of the rental premises (see page 26 – 53 in L#1). As shown in these pictures, a significant number of personal possessions were left in the rental premises, for which permission to dispose of these items was duly sought and received on 14 July 2022. The landlord testified

that she conducted a move in condition inspection that included photos of the unfurnished and clean rental premises prior to the tenants taking possession, however, a copy of this report was not submitted to this tribunal. The landlord testified that there was substantial damage throughout the rental premises, but that she is just seeking compensation in the amount of \$1,125.25 for the costs of having the abandoned belongings removed from the rental premises (see page 21 and 22 in L#1 for official documentation related to this charge).

## **Analysis**

21. I accept the landlord's testimony and evidence that she incurred costs in the amount of \$1,125.25 as a result of having to inventory and then dispose of the tenants abandoned possessions and that the landlord followed all legislative requirements in pursuing this process.

## **Decision**

22. The landlord's claim for compensation for damage for the costs of removing abandoned personal possessions, succeeds in the amount of \$1,125.25.

## **Issue 3: Security Deposit**

### Relevant Submission

23. The landlord requested to retain the \$300.00 security deposit against the monies owed by the tenants. Proof of collection of this deposit is included in the rental agreement (L#2) as well as the rental ledger (L#3), where \$300.00 is identified as having been collected on 27 January 2021.

## **Analysis**

24. According to section 14, sub 10, 12 and 14 of the *Residential Tenancies Act, 2018*:

*(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.*

25. Because the landlord's claim for compensation for rent and damages are in excess of the \$300.00 security deposit collected, the landlord is entitled to retain this full amount against monies owed by the tenants.

### **Decision**

26. The landlord is entitled to retain the full amount of the \$300.00 security deposit collected.

### **Issue # 4 – Hearing Expenses**

27. The landlord claimed the costs of applying for the \$20.00 application fee. As her claim has been successful, the tenants shall pay this expense.

### **Summary of Decision**

28. The landlord is entitled to a payment of \$3,070.25, determined as follows:

a) Rent Owing.....	\$2,225.00
b) Compensation for damages.....	\$1,125.25
c) Hearing Expenses.....	\$20.00
d) Less Security Deposit.....	<u>(\$300.00)</u>
e) Total.....	\$3,070.25

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26 September 2022

Date



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Residential Tenancies Tribunal