

Residential Tenancies Tribunal

Applications 2022 No. 0583 NL
2022 No. 0640 NL

Decision 22-0583-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:04AM on 26 October 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], hereinafter referred to as “the landlord”, participated in the hearing. [REDACTED], hereinafter referred to as the “property owner” also participated in the hearing.
4. An affidavit of service was provided by the tenant confirming that the landlord was served a copy of the claim in person on 19 July 2022 (T#1). The property owner submitted an affidavit of service (L#1), stating on 19 September 2022 that he served the tenant by email and proof of service was provided (L#2). All parties confirmed service.
5. The details of the claim were presented as an originally fixed term rental agreement that began on 01 January 2020. Monthly rent was originally set at \$1,300.00 a month and a security deposit in the amount of \$975.00 was collected on 05 December 2019. The tenant vacated the rental premises on the mutually agreeable date of 30 June 2022 and a copy of the original rental agreement was provided by both the tenant and the landlord (T#3).
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 tenant is seeking the full return of the \$975.00 security deposit collected.
8. The landlord is seeking to retain \$345.00 of the security deposit collected.

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

Preliminary Matters

11. The rental premises is located at [REDACTED]. The tenant occupied the main floor apartment with his partner who is also listed on the rental agreement but not listed as an applicant in this dispute.

Issue 1: Return Security Deposit (\$975.00) Retain Security Deposit (\$345.00)

Tenant's Position

12. The tenant requested the return of the full \$975.00 security deposit, for which proof of payment was provided (see page 4 in T#2). He stated that he cleaned the rental premises prior to vacating, and that he took great care of the premises, especially the yard. The tenant testified that he only became aware of the Move-In Condition Inspection Report and the Move-out Condition Inspection Report after both documents were provided to him by the property owner on 13 October 2022. The tenant testified that he was not present for either inspection, and that he took issue with the difference in photo quality between the two reports. In particular, the tenant testified that the photos in the Move-Out Condition Inspection Report were zoomed in and more plentiful than the photos in the Move-In Condition Inspection Report which provided more a general view of the premises.
13. The tenant also referred to a sworn affidavit that was submitted by a [REDACTED] who viewed the rental premises with the tenant a day prior to his taking occupancy of the rental premises (T#3). The tenant testified that he was required to clean the premises upon occupying it and stated that he wanted to review the property owner's invoice for a December 2019 cleaning of the rental premises. The tenant stated that he did not have pictures of the rental premises from prior to his occupancy.

Landlord's Position

14. The landlord testified that she is “not overly picky” when she conducts her inspections and that she will clean up slight dirt herself if the rest of the premises is clean. The landlord referred to the Move-In Condition Inspection Report conducted on 20 December 2019 (L#3) and stated that tenant would have viewed the rental premises earlier in December 2019. The landlord referred to the Move-Out Condition Inspection Report (L#4) conducted in the morning of 30 June 2022 and testified that this inspection was not attended by the tenant. She testified that she immediately got a cleaner in because she had renters for July 2022. A copy of the receipt for cleaning dated 30 June 2022 was provided, along with notes from the cleaner of “so hard to clean” (see page 3 and 4 in L#5).
15. Regarding the tenant's claims of difference in photo quality, the landlord testified that she takes zoomed in photos when needed. The landlord also spoke of how tenants are provided with guidance for cleaning prior to vacating so that they can maximize the likelihood of the full return of their deposits.
16. The property owner testified that he had the rental premises professionally cleaned prior to it being occupied by the tenant on 01 January 2020. He also stated that a cheque for the remainder of the security deposit was made promptly available to the tenant (see pages 1 and 2 in L#5). The property owner confirmed that the security deposit is being held by the landlord and not himself.

Analysis

17. The tenant is requesting that his security deposit be returned but this has been countered by the landlord who has applied to keep a portion of the deposit and offered to return the remainder. The landlord referred to Move-In and Move-Out Condition Inspection Reports as evidence of the need for cleaning, but the tenant disputed these reports and argued that he was not present for either inspection.
18. 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.


19. I reviewed the Condition Inspection Reports provided and I acknowledge that there appears to be noticeably more dirt and staining across multiple areas of the rental premises in the Move-Out Condition Inspection Report. However, I find that the landlord failed to establish on the balance of probabilities that she is entitled to retain \$345.00 of the security deposit collected because:
- Neither inspection was attended by the tenant.
 - As the tenant argued, the photo quality differed between the two inspections. The Move-In Condition Inspection Report photos are general room level photos, while the Move-Out Inspection Report photos are more numerous and zoomed in, covering absolutely all areas of the rental premises.
 - The landlord did not conduct the Move-In Condition Inspection Report, it was conducted by a member of her team which means she did not have first hand knowledge of the condition of the premises prior to occupancy.
 - The cleaning receipt provided for cleaning is in the amount of \$300.00 and not \$345.00 as claimed by the landlord.
 - The tenant submitted a sworn affidavit stating that on the day prior to him taking occupancy (T#3):
 - i. The floors looked dull and unwashed;
 - ii. The kitchen and bathroom had a grubby “unfresh” look;
 - iii. The move in condition and cleanliness... left a lot to be desired.
20. As such, I was not able to verify that the state of the rental premises was indeed left in worse condition than when it was first occupied by the tenant.

Decision

21. The landlord’s claim to retain \$345.00 of the security deposit does not succeed.
22. The tenant’s claim for the return of their security deposit succeeds in the full amount of \$975.00.

27 October 2022

Date


Jaclyn Casler
Residential Tenancies Tribunal