

Residential Tenancies Tribunal

Applications 2022 No. 0604 NL

Decision 22-0604-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 11:04AM on 31 August 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the tenant", participated in the hearing.
3. The respondent, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing.
4. An affidavit of service was provided by the tenant confirming that he served the landlord by email on 19 August 2022 (T#1). Proof of electronic service was provided. The tenant testified that he knew to serve electronically because that was the email he used for correspondence with the landlord (T#2). Proof of the email used for service was also provided (T#3).
5. The details of the claim were presented as subsequent fixed term rental agreement that originally started January 2021. Monthly rent was set at \$550.00 exclusive of shared utilities and a security deposit in the amount of \$412.50 was collected. A copy of the written rental agreement was provided (T#4).
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 following:
 - An order for rent refunded in the amount of \$248.00; and
 - An order for return of the full security deposit in the amount of \$412.50.

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 a room in a single family house located at [REDACTED] [REDACTED] that contains three individual rooms in the main floor apartment, one of which is occupied by the landlord who is also the homeowner. The basement apartment is separately occupied by other tenants.
11. Both parties testified that they did not receive evidence from either parties regarding individual claims for the security deposit in question. Because the landlord did not file a counterclaim for retaining the tenant's security deposit after receiving notice of the tenants claim against her, I proceeded with the hearing since this evidence was immaterial in accordance with 14(12) of the *Act*.

Issue 1: Return of Rent (\$248.00)

Tenant's Position

12. The tenant vacated the rental premises on 16 August 2022 and returned keys to the landlord on 18 August 2022. The tenant testified that he paid August 2022 rent in the full amount, including his share of utilities and proof of E-Transfer was provided (T#5). The tenant testified that he vacated the rental premises because he was issued a termination notice from the landlord in on 17 July 2022 requiring him to vacate on 22 July 2022 (T#6). The tenant further testified that he vacated the rental premises for safety reasons as he was worried that something would be left in his room without his consent and that this worried him because the landlord previously had the RNC attend the rental premises.
13. Regarding the landlord's request for repairs that was issued to the tenant on 12 July 2022 (T#7) the tenant testified that he did not complete the repairs within the stated timeline because doing so would require him to repair them again when he actually vacated the rental premises as intended in October 2022 so that he could move to Toronto. The tenant testified that he completed all required repairs

prior to vacating the rental premises and provided two videos and a picture of the rental premises after he vacated as proof of his efforts (T#8).

14. The tenant also referred to a text that he had sent the landlord on 11 August 2022 indicating that he would be moving in a few days and that he would address any and all damages required (T#9). The tenant testified that he received no response to this request and reported that he was subsequently informed by the landlord to not communicate with him or attend at the rental premises.

Landlord's Position

15. The landlord testified that she issued the tenant with the 17 July 2022 termination notice under section 22 and 24 of the *Act* because she had previously issued him a request for repairs that was not addressed by her stated deadline and also because she was receiving noise complaints from the downstairs tenants. The landlord testified that she was surprised that the tenant vacated when he did because she thought that he was staying until October 2022.

Analysis

16. I accept the evidence and testimony from the landlord and tenant that a 5 day termination notice was issued to the tenant requiring him to vacate on 22 July 2022. I also accept that the tenant vacated the rental premises on 16 August 2022 and then returned keys on 18 August 2022 in response to this termination notice. Consequently, I find that the landlord is only entitled to retain rent for the month of August 2022 until the day that she regained possession of the rental unit (e.g., 18 August 2022) and that the remainder shall be returned to the tenant.
17. This means that the landlord shall retain \$325.44 of the \$550.00 rent collected for August and return \$224.56 to the tenant.

$$\begin{aligned} \$550.00 \times 12 &= \$6,600.00 / 365 = \$18.08 \\ 18.08 \times 18 &= \$325.44 \\ \$550.00 - \$325.44 &= \$224.56 \end{aligned}$$

18. Please note that the calculations shown above do not address the apparent \$50.00 paid for utilities for August 2022 (shown in paragraph 12) as the tenant's claim was for return of rent and not for return or payment of utilities.

Decision

19. The tenant's claim for return of rent succeeds in the amount of \$224.56.

Issue 2: Security Deposit (\$412.50)

Relevant Submissions

20. The tenant applied for the full return of \$412.50 security deposit because it was not returned by the landlord who testified she has claims against it. However, the landlord did not submit a counterclaim requesting an order to retain the security deposit.

Analysis

21. 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.

22. A landlord who does not make an application for their claim against a security deposit, shall, in accordance with 14(12) of the Act, return this security deposit to the tenant. Because the landlord in this claim did not submit her own counterclaim for retaining the security deposit, it shall be returned in the full amount collected to the tenant.

Decision

23. The tenant's claim for the return of their security deposit succeeds in the full amount of \$412.50.

Summary of Decision

24. The tenant is entitled to the following:

- An order for the full return of the \$412.50 security deposit collected.
- An order for payment from the landlord in the amount of \$637.06, determined as follows:
 - a) Rent Owing..... \$224.56
 - b) Return of Security Deposit..... \$412.50
 - c) Total..... \$637.06

06 September 2022

Date

Jaclyn Casler
Residential Tenancies Tribunal