

Residential Tenancies Tribunal

Applications: 2022 No. 0752 NL

Decision 22-0752-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:16AM on 18 October 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing, as did the respondent, [REDACTED], who is hereinafter referred to as "the tenant".
3. An affidavit of service was provided by the landlord (L#1) confirming that the tenant was served by registered mail of the claim against her on 22 September 2022. A review of the tracking number associated with this service indicates that the information was not picked up by the tenant, however this is still considered good service because 42(6) of the *Residential Tenancies Act* considers items served on the fifth day after mailing. The tenant was reached by phone call at the start of the hearing and agreed to participate in the hearing.
4. It was revealed during hearing that this dispute relates to a tenancy that was to have began 01 July 2021, for which a deposit was paid on 21 June 2021 by the tenant. However, the tenant never occupied the rental premises located at [REDACTED] [REDACTED] because as the tenant testified, she was prevented by her financial situation from taking occupancy.
5. The tenant filed a dispute with this office (2021-0467-SJ) for return of a \$425.00 security deposit. A hearing was scheduled for 08 February 2022 related to this matter, but the matter was dismissed because the landlord attended the hearing, but the tenant did not (A#1).
6. The tenant filed a second dispute with this office (2022-0355-NL) for return of a \$425.00 security deposit, for which an order was issued by the Director of Residential Tenancies for return of the full value of this deposit (A#2). This order was issued because the landlord did not file a counterclaim after being served notice of the tenant's claim as required by 14(11) of the Act. The landlord testified that she has not yet paid this money to the tenant, and that she has also filed

notice of appeal with the Supreme Court. However, as of the date of the hearing, this notice was not on file with this tribunal.

7. The landlord submitted a written summary of her claim (L#2) and explained that she is seeking \$505.00 as “compensation as compensation for inconvenience, and that this involves:
 - The \$425.00 “Damage deposit”;
 - The \$60.00 fee that she was charged for the application to the Supreme court (as per paragraph 6); and
 - The \$20.00 application fee that she was charged for this dispute.
8. The tenant testified that she is a single mom and that she was attempting to leave a bad relationship at the time she intended to occupy the landlord's rental premises. The tenant testified that she contacted the landlord and informed her that she would not be occupying the rental premises as intended, and requested that the deposit be returned. The tenant testified that this request was refused, and that it was “not right” that the landlord applied this money as a credit to others. The tenant testified that she did not attend the hearing on 08 February 2022 because notice of the hearing was issued to a mailbox that she was not able to physically access. The tenant also testified that she has spent an additional \$423.00 in the process of trying to enforce Order # 2022-0355-NL.

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 sections 14, 42 and 50 of the *Act*.

Analysis

11. The following dates are significant to this dispute:
 - The tenancy was to have began on 01 July 2021.
 - The order referred to in paragraph 10 was issued on 19 August 2021.
 - The landlord filed this application on 22 August 2022.
12. According to 42(1) of the *Act* (emphasis added):

Application to director

42. (1) A landlord or tenant may, within one year after termination of the rental agreement, apply to the director to determine

- (a) *a question arising under this Act or the regulations;*
- (b) *whether a provision of a rental agreement has been contravened; or*

(c) whether a provision of this Act or the regulations has been contravened.

13. As such, I find that the landlord's application came outside of the one year window allowed by the legislation. I nonetheless proceeded with the hearing because both sides expressed dissatisfaction with the dispute resolution process to date and communicated a desire to be heard.
14. Regarding the substance of the landlord's claim for compensation, I find that I am unable to consider it as distinct from the landlord's own appeal of Order # 2022-0355-NL because:
 - The landlord requesting compensation for a deposit she is to return, BUT has not yet returned;
 - The landlord has filed an appeal of this order with the Supreme Court;
 - The landlord is requesting compensation for an appeal to a separate decision making body (e.g., the Supreme Court).
 - The landlord requested compensation for hearing fees, but as her request was not generally successful, her claim for compensation does not succeed.
15. As such, I find that the landlord's request for compensation for inconvenience does not succeed in any amount.

Decision

16. The landlord's claim for compensation for inconvenience does not succeed in any amount.

20 October 2022

Date

Jaclyn Casler
Residential Tenancies Tribunal