

Residential Tenancies Tribunal

Applications 2022 No. 0795 NL
2022 No. 0908 NL

Decision 22-0795-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:07AM on 19 January 2023 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the tenant", participated in the hearing, as did the respondent, [REDACTED], hereinafter referred to as the "the landlord".
3. The original hearing date was postponed after the tenant submitted his original affidavit of service (T#1). The landlord served notice of the rescheduled hearing to the tenant via text (L#1). Both parties agreed that they were ready to participate in the hearing.
4. The details of the claim were presented as a month-to-month agreement that started on December 2019. Monthly rent was set at \$1,000.00 POU, due on the first of the month, and a security deposit in the amount of \$750.00 was collected.
5. 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

6. The tenant is seeking the full return of their security deposit in the amount of \$750.00.

7. The landlord is seeking the following:

- Payment of rent in the amount of \$1,000.00;
- Payment of late fees in the amount of \$75.00;
- Compensation for Damages in the amount of \$150.00;
- Payment of Utilities in the amount of \$29.62, and
- An order for the security deposit to be retained in the amount of \$750.00.

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 sections 10, 14 and 18 of the *Act*.

Preliminary Matters

10. The tenant served both the landlord and the property manager, [REDACTED], notice of his claim for return of the security deposit. The landlord, [REDACTED], [REDACTED], did not identify [REDACTED] as a co-applicant in his claim because [REDACTED] is his property manager and has no ownership of the rental premises. I accepted this information and identified only [REDACTED] as the landlord as shown above in paragraph 2.

11. The rental premises is a main floor apartment located at [REDACTED]. [REDACTED] Both parties agreed that the tenant vacated on 01 August 2022 after being issued a three month termination notice so that the landlord could complete necessary renovations. The landlord testified that the termination notice identified a move out date of 31 July 2022. A copy of this notice was not provided.

Issue 1: Payment of Rent (\$1,000.00)

Landlord's Position

12. The landlord testified that he is seeking payment of rent in the amount of \$1,000.00 for August 2022 because the tenant did not vacate the premises on 31 July 2022. He testified further that the tenants delay in vacating meant that the contractors who attended to the premises on 01 August 2022 were delayed. The landlord provided a signed letter from the company hired in support of this claim (L#2). He testified that he secured new tenants for the main floor of the rental premises from September 2022 and that all exterior renovations were completed by November 2022.

Tenant's Position

13. The tenant testified that he moved out on 01 August 2022 because that was the only day the moving company was available. He also testified that he thought the property manager gave permission. The tenant denied interfering with the contractors while he was removing all of his belongings from the premises.

Analysis

14. The landlord and tenant agreed that the tenant vacated on 01 August 2022 after being issued a termination notice. As such, I find that the landlord is entitled to payment of rent in the amount of \$32.88 only for the single day (e.g., 01 August 2022) that the tenant retained possession of the unit.

$$\$1000.00 \times 12 = \$12,000.00 / 365 = \$32.88$$

Decision

15. The landlord's claim for payment of rent succeeds in amount of \$32.88.

Issue 2: Payment of Late Fees (\$75.00)

Landlord's Position

16. The landlord has assessed late fees in the amount of \$75.00 because he did not receive payment of rent for August 2022.

Tenant's Position

17. The tenant did not specifically comment on the matter of late fees.

Analysis

18. Section 15 of the Residential Tenancies Act, 2018 states:

Fee for failure to pay rent

15. (1) Where a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister.

19. The minister has prescribed the following:

Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed:

- (a) *\$5.00 for the first day the rent is in arrears, and*
- (b) *\$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00.*

20. As stated in paragraph 14, I found that the landlord is entitled to a proportionate payment of rent in the amount of \$32.88 for the single day (01 August 2022) that the tenant retained possession of the rental unit. Consequently, I find that the landlord is not entitled to the maximum award of late fees because he is claiming late fees on a single days rent only. Instead, I will arbitrarily award late fees in the amount of \$5.00.

Decision

21. The landlord's claim for late fees succeed in the amount of \$5.00.

Issue 3: Payment of Utilities (\$29.62)

Landlord's Position

22. The landlord submitted the NL Power bill for the rental premises for the month of August 2022 in the amount of \$29.62 (L#3).

Tenant's Position

23. The tenant rejected the claim for utilities and testified that he had the power account in his name until 01 August 2022 when he vacated.

Analysis

24. As shown in paragraph 14, I found that the landlord is entitled to payment of rent to 01 August 2022 only. I also accept, as shown in the landlord's NL Power invoice, that the tenant closed his utility account on 01 August 2022. Consequently, I find that the landlord is not entitled to compensation for utilities because the tenant already payed all utilities required for the duration of his tenancy.

Decision

25. The landlord's claim for utilities does not succeed in any amount.

Issue 4: Compensation for Damages (\$150.00)

Landlord's Position

26. The landlord submitted a written summary of his claim for damages and testified that he is seeking compensation for the 10 hours spent cleaning the kitchen, removing debris and plastering assorted small holes in the wall (L#4). The landlord provided photos in support of his claims (L#5) after the tenants vacated, but did not provide photos or other documentation from prior to occupancy.

Tenant's Position

27. The tenant acknowledged forgetting to clean the fridge, but testified that he otherwise cleaned the premises. The tenant referred to the holes in the wall and testified that they were regular use only.

Analysis

28. I accept that the landlord and tenant disagreed on the extent of damages claimed. Based on my review of the photos submitted, along with the landlord's testimony, I nonetheless accept that he spent 10 hours cleaning after the tenant vacated. I therefore find that he is entitled to compensation in accordance with Residential Tenancies Policy 09-005, which identifies a maximum hourly rate for cleaning of \$21.70 an hour. Where the landlord has claimed compensation is the lesser amount of \$150.00 (e.g., \$15 an hour), I find that his claim succeeds as presented.

Decision

29. The landlord's claim for compensation for damages succeeds in the amount of \$150.00.

Issue 5: Hearing Expenses

30. The landlord claimed the \$20.00 expense of applying for this hearing. As his claim has been successful, the tenant shall pay this expense.

Issue 6: Security Deposit (\$750.00)

Relevant Submissions

31. The tenant has requested the full return of the security deposit and the landlord has applied to keep it against monies owed.

Analysis

32. 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.

33. Where the landlord's claim for payment of rent, late fees, damages and hearing expenses has succeeded in the amount of \$207.88 (e.g., \$32.88 + \$5.00 + \$150.00 + \$20.00) he shall retain that portion of the security deposit. The remaining \$542.12 (e.g., \$750.00 - \$207.88) shall be returned to the tenant.

Decision

34. The landlord's claim against the security deposit succeeds in the amount of \$207.88.

35. The tenant's claim for the return of the security deposit succeeds in the amount of \$542.12.

Summary of Decision

36. The landlord is entitled to retain \$207.88 from the tenant's security deposit, determined as follows:

a) Rent.....	\$32.88
b) Late Fees.....	\$5.00
c) Compensation for Damages.....	\$150.00
d) Hearing expenses.....	\$20.00
e) TOTAL.....	<u>\$207.88</u>

37. The landlord shall pay to the tenant \$542.12, representing the return of the remaining security deposit.

25 January 2023

Date

Jaclyn Casler
Residential Tenancies Tribunal