

Residential Tenancies Tribunal

Applications 2022 No. 0820 NL

Decision 22-0820-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 1:52PM on 09 November 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 he served the tenant by email on 23 September 2022 and proof of service was provided. The tenant acknowledged receipt of service. The tenant also acknowledged that the hearing date was twice rescheduled on request of the landlord, and that notice of this was provided by the Residential Tenancies Office.
4. The details of the claim were presented as an intended month-to-month tenancy signed by the tenant on 11 July 2022 and beginning 16 July 2022. A written copy of this rental agreement was provided (L#3). The tenant was provided with keys to the premises on 15 July 2022, and resided in premises on the evening of 19 July 2022 before issuing notice of termination on 20 July 2022 and returning keys to the landlord that same day. Monthly rent was to be \$475.00, all inclusive, due on the first of the month, and a security deposit in the amount of \$356.00 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 landlord is seeking the following:
 - Validity of Termination Notice Determined;
 - Payment of rent in the amount of \$238.00;
 - Payment of late fees in the amount of \$75.00;
 - Compensation for damages in the amount of \$165.00; and
 - An order for the security deposit to be retained in the amount of \$356.00.

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
8. Also relevant and considered in this case is sections 15, 19, 21 and 23 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

9. The rental unit is a room within the 3 bedroom basement apartment located at [REDACTED]. The landlord currently resides in the main floor of the rental premises with tenants, and previously resided in the main floor unit with his wife and children. The landlord and tenant agreed that a sum of \$594.00 was paid to the landlord on 12 July 2022, representing the \$356.00 security deposit and ½ months rent for July 2022 (e.g., \$237.00).
10. The tenant received an order without hearing from the Director of Residential Tenancies for return of the \$356.00 security deposit. This order (no. 2022-0654-NL) is dated 04 October 2022 (A#1) and both parties agreed that this money has not yet been returned to the tenant. Because the Director of Residential Tenancies disposed of the deposit on 04 October 2022, both parties were informed that the landlord's claim against the full value of this security deposit would not be addressed in this hearing

Issue 1: Validity of Termination Notice Determined Landlord's Position

11. The landlord testified that he was provided with email notice of formal termination by the tenant on 20 July 2022. The landlord submitted a copy of this notice (L#4). It is a template notice provided by this tribunal, identifying a move out date of 20 July 2022. It was issued under two sections:
 - Premises uninhabitable (section 21(1)(3))
 - Interference with peaceful enjoyment and reasonable privacy (Section 23(1)(2))

12. The landlord referred to a written summary document of his claim (L#5) against the tenant and testified to the following:

- The tenant was not provided with keys to the door of the basement apartment because the former tenant lost these keys and he needed to get more keys made.
- That he provided the tenant with short term alternative, sharing keys for the main floor apartment (then occupied by himself and his family) that the tenant could use for accessing her rental unit in the basement apartment.
- That he personally attended to the tenant's rental unit without notice as an emergency on the evening of 20 July 2022 because he understood she would be vacating the rental premises that night.
- That he denied the exterior door to the basement rental apartment was damaged.

Tenant's Position

13. The tenant agreed with the landlord's timeline. She testified that she was open with the landlord about not wanting to reside long term in the rental unit and that the rental unit itself (a room in a 3 bedroom apartment) "was not ideal". The tenant testified that she was concerned with the condition of the exterior door to the basement apartment when she visited the rental premises on 10 July 2022. She testified further that she decided on 15 July 2022, that the rental unit was not appropriate for her when she was provided with keys because:

- She discovered that the exterior door to the basement apartment had not been fixed.
- She was not provided with a timeline for when the door to the basement would be fixed.
- She was not provided with a key to this exterior door.
- She was provided with a key to the main floor apartment and told that she could access her rental unit from the main floor apartment.
- She also had concerns with the security of the door to her own rental unit (e.g., the room).

14. Consequently, the tenant viewed a separate rental premises on 19 July 2022 and was optimistic that she would become the successful tenant. The tenant testified that she communicated her likelihood of having a new rental premises when she attended that evening to the landlord's rental premises. The tenant then testified that she became alarmed for her personal self when the landlord attended to her unit and knocked on her personal door without notice. She stated, that as a woman, she found it very concerning that her rental unit could be accessed by the landlord without notice or permission. It was because of this, that the tenant testified she issued the termination notice under 23 of the *Act* for interference with peaceful enjoyment and reasonable privacy.

15. The tenant testified that she also issued the notice under section 21(1) of the *Act* because she doubted that the condition of the exterior door and the stairway to the rental unit from the main floor apartment were up to building code. The tenant acknowledged that she did not have a building or other enforcement inspector

attend to the premises to validate either claim. The tenant referred to a rebuttal letter that she submitted, summarizing her claim while also providing some photographic evidence from the rental premises (T#1). The tenant testified that she provided appropriate notice of termination because she issued the notice on 20 July 2022 and only resided in the rental premises for one night (e.g., 19-20) despite paying rent from 16 July 2022 through to 31 July 2022.

Analysis

16. The landlord and tenant agreed that a month-to-month rental agreement was signed and also agreed on the timeline of events related to this tenancy. They disagreed on the legal significance of individual actions taken by either side in this rental agreement.
17. Where the tenant issued the landlord with a termination notice for reasons of premises uninhabitable and interference with peaceful enjoyment and reasonable privacy, she failed to establish on the balance of probabilities that she was justified in doing so. Specific to her claim that the premises were uninhabitable (section 21(1) of the *Act*) the tenant testified that she did not have the premises inspected by an appropriate authoritative body capable of ordering that a premises be shut down for safety purposes. According to Residential Tenancies Policy 07-006 Premises Uninhabitable, uninhabitable situations can occur when the landlord has not complied with laws respecting health, safety or housing applicable to rental premises.
18. Where the tenant argued that a supposedly broken exterior door (which the tenant herself acknowledged still worked as evidenced in her desire for keys) was a justifiable reason for premises uninhabitable, the landlord denied that the door was indeed unsafe or not useable. The tenant also mentioned concerns with a stairway and provided pictures of a stairway (see page 8 in T#1) but she failed to provide documentation for a suitable authority to support her safety concerns. Consequently, I find that the tenant's issuance of a termination notice for reasons of premises uninhabitable, is not valid.
19. Regarding the tenant's claim for interference with peaceful enjoyment and reasonably privacy, I note that the stated move out date on her termination notice is the same day (20 July 2022) the notice was issued (20 July 2022). This is contrary to section 23(1)(2) of the *Act* which permits the tenant to "*move out not less than 5 days, but not more than 14 days, after the notice has been served.*" Where the tenant argued in paragraph 15 that this notice period did not matter because she paid rent for the entire period, I find that the notice was not properly issued because dates cited on the termination notice, do not meet or exceed legislated requirements. Consequently, the tenant's reasons for issuance were not considered.

Decision

20. The termination notice issued by the tenant on 20 July 2022 is not a valid notice.

Issue 2: Payment of Rent (\$238.00)

Landlord's Position

21. The landlord testified that he is entitled to payment of rent in the amount of \$238.00 because he signed a month-to-month rental agreement with the tenant and she vacated the rental premises without paying for a full month. The landlord stated that he was able to secure a replacement tenant from 16 August 2022 and that is seeking compensation for rent for the period of 01 August 2022 to 15 August 2022.

Tenant's Position

22. The tenant testified that she should not be required to pay rent because she issued the termination notice on 20 July 2022 and that this notice meant that she was not required to pay rent.

Analysis

23. As noted in paragraph 20, the termination notice issued on 20 July 2022 was not valid. I therefore find that the landlord is entitled to full value of his claim for rent in the amount of \$238.00 (representing 01 August 2022 – 15 August 2022) because he could have reasonably expected to receive payment for one full month of rent after signing a month-to-month rental agreement with his tenant.

Decision

24. The landlord's claim for rent succeeds in the full value of \$238.00.

Issue 3: Payment of Late Fees (\$75.00)

Landlord's Position

25. The landlord has assessed late fees in the amount of \$75.00 because he did not receive rent for 01 August and 15 August 2022.

Tenant's Position

26. The tenant testified that she should not be required to pay late fees because she issued the termination notice on 20 July 2022 and that this notice meant that she was not required to pay rent.

Analysis

27. 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.

28. 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.

29. As stated in paragraph 24, I found that the landlord is entitled to payment of rent. Because rent for the period of 01 August 2022 – 16 August 2022, has been late since 02 August 2022, I find that the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

30. The landlord's claim for late fees succeed in the amount of \$75.00.

Issue 3: Damages

Landlord's Position

31. The landlord submitted a damage ledger outlining his claim for compensation (L#6) that included the following items:

- Cleaning of rental unit 2 hours \$50.00
- Washing of sheets 20 minutes \$15.00
- Listing on Kijiji 40 minutes \$20.00
- Responding to messages 2 hours \$50.00
- Showing room to new tenants 2 hours \$30.00

32. The landlord testified that he did not complete a move in or move out condition inspection or inspection report. He stated that he claimed compensation for cleaning because he is renting in Covid times and this requires careful cleaning, even if the rental unit is only occupied for one night by the tenant.

Tenant's Position

33. The tenant disputed the landlord's claim for cleaning and stated that she slept on top of the bed using her own blanket. She testified that she had no concerns with the cleanliness of the rental premises when she took possession of the unit.

Analysis

34. The applicant in any damage claim is required to provide and speak to the evidence (witness, documentary, or recorded) necessary to establish on the balance of probabilities that:
 - That the damage they are claiming compensation, exists;
 - That the respondent is responsible for the reported damage through a willful or negligent act; and
 - The value to repair or replace the damaged item(s).
35. If and when damaged items pass the validity test of damages based on the balance of probabilities, actual compensation amounts are calculated in accordance with *Residential Tenancies Policy 9-005 Depreciation and Life Expectancy of Property*. According to this policy, higher compensation is awarded for damage of newer items, less compensation is awarded for items considered to have exceeded their serviceable life.
36. The landlord is not entitled to compensation for time spent securing a new tenant because the Residential Tenancies Tribunal considers such time to be a standard responsibility of landlords conducting the business of landlords.
37. Regarding the landlord's claim for compensation for cleaning, the landlord successfully established that he followed expected COVID related protocols for cleaning the rental premises after it was vacated by the tenant, regardless of the length of occupancy. As such, his claim for compensation for cleaning succeeds in the full amount of \$65.00 claimed (e.g., \$50.00 + \$15.00 for cleaning and laundry).

Decision

38. The landlord's claim for compensation for damages succeeds in the amount of \$65.00.

Issue 4: Hearing Expenses

39. The landlord claimed the \$20.00 expense of applying for this hearing along with the \$50.00 expense of retaining a commissioner of oaths. Where the landlord failed to submit a receipt for this \$50.00, this tribunal frequently receives receipts in that amount from the commissioner used, and I accept it as a valid expense.

Because the landlord's claim for compensation for rent, late fees and damages has been successful, the tenant will pay the \$70.00 in hearing expenses.

Summary of Decision

40. That the termination notice issued by the tenant on 20 July 2022 was not a valid notice.
41. The landlord is entitled to payment from the tenant in the amount of \$448.00, determined as follows:

a)	Rent.....	\$238.00
b)	Late Fees.....	\$75.00
c)	Compensation for Damages.....	\$65.00
d)	Hearing Expenses.....	\$70.00
e)	Total.....	<u>\$448.00</u>

14 November 2022

Date

Jaclyn Casler
Residential Tenancies Tribunal