

Residential Tenancies Tribunal

Application 2022 No. 0977 NL

Decision 22-0977-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 11:04 AM on 05 December 2022 via teleconference.
2. The applicant [REDACTED], hereinafter referred to as “the tenant” participated in the hearing. [REDACTED], hereinafter referred to as “the tenant’s mother” also participated in the hearing.
3. The respondent, [REDACTED], hereinafter referred to as “landlord1” participated in the hearing. The respondent’s wife, [REDACTED], hereinafter referred to as “landlord2” also participated in the hearing.
4. The tenant’s mom referred to the affidavit of service provided, along with proof of service (T#1) and testified that she served landlord1 on 12 November 2022 by email. Landlord1 confirmed service.
5. The details of the claim were presented as fixed-term 12 month rental agreement that started 01 September 2021. Monthly rent was \$500.00, all inclusive for a furnished room and paid in full (e.g., \$6,000.00) at the start of the tenancy. A security deposit was not collected and a copy of the rental agreement was not provided.
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 refund of rent in the amount of \$2,500.00.

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 are sections 10 and 18 of the *Act*.

Preliminary Matters

10. The rental premises is a 5 bedroom dwelling located at [REDACTED] owned by the landlords. The premises was occupied from September 2021 onwards by five boys who graduated high school together, including the tenant and a son of the landlords.

Issue 1: Refund of Rent \$2,500.00

Tenant's Position

11. The tenant's mother testified that she communicated with the landlords through Messenger, and that they informed her of their concerns with the tenant. She was repeatedly given information that suggested her son was unwell. The tenant's mother testified that she attended to the rental premises on 18 March 2022 and removed her son, the tenant, so that he could receive medical treatment in [REDACTED]. She testified that the landlords were aware of her removing the tenant.
12. The tenant's mom testified that she previously contacted the Landlord Tenant Office and was informed that she could expect some rent refunded, but not for the month of April 2022. As such, she adjusted her claim down to \$2,000.00.

Landlords' Position

13. Landlord2 testified that she and landlord1 attended to the rental premises every 3 weeks to clean and cook food for the boys (the five tenants). She testified that she noticed the tenant was unwell because he was not eating like he used to and would not eat his favourite foods that she prepared for him. Landlord2 testified that the tenants are all good friends and that she and her husband were trying to do the right thing.
14. Landlord1 testified that he contacted the Landlord Tenant Office and was told that he only had to return rent if the tenant was hospitalized. He testified further, that because the tenant has paid rent in full for the year, the tenant would have been expected to find a sublet if he wanted to the prepaid rent to be returned.
15. Landlord2 testified, that at no point between 18 March 2022 and 31 August 2022, was the vacant room in the rental premises advertised as available for rent.

Analysis

16. I accept that the rental premises was occupied by a group of boys and maintained by landlords who notified the tenant's mother that her son was unwell. From this, the tenant's mother then collected her son and brought him home to [REDACTED]. Because however, the tenancy was a fixed term, set to expire 31 August 2022, and rent had been paid in full for the duration, there was a dispute regarding entitlement to rent for the remainder of the tenancy. The tenant's mother requested that an appropriate portion be returned, and the landlords sought to retain all monies based on guidance allegedly received.
17. Because the tenant had signed a fix term rental agreement, he was required, in accordance with 18(1)(c) of the *Act* to provide notice of termination to the landlord "*not less than 2 months before the end of the term*" (e.g., 31 August 2022). The tenant's mother testified that the only notice given to the landlords, was by Messenger informing them that she collected her son on 18 March 2022. As such, I find that the tenant did not provide valid notice of termination of the fixed term lease to the landlords.
18. That said, as noted in paragraph 15, the landlords at no point advertised the room previously occupied by the tenant as available for rent after they were notified on 18 March 2022 that the tenant had vacated. This means that they failed to satisfy Statutory Obligation 4 under section 10 of the *Act*, which reads as follows:
 4. *Mitigation on Abandonment - Where the tenant abandons the residential premises, the landlord shall mitigate damages that may be caused by the abandonment to the extent that a party to a contract is required by law to mitigate damages.*
19. Consequently, I accept the modified request put forward by the tenant's mother in paragraph 12 and I find that the tenant is entitled to the return of prepaid rent for the period between May 2022 and August 2022 (e.g., 4 x \$500.00) because the landlord's did not mitigate their loss of a tenant. Had they actively advertised the room for rent, they could have reasonably expected to secure a replacement tenant from 01 May 2022 onwards.

Summary of Decision

20. The tenant's claim for refund of rent succeeds in the amount of \$2,000.00.

21. The landlords shall pay to the tenant an amount of \$2,000.00.

05 December 2022

Date



Jaclyn Casler

Residential Tenancies Tribunal