

Residential Tenancies Tribunal

Applications: 2022 No. 0984 NL
2022 No. 1030 NL

Decision 22-0984-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 1:55 PM on 14 December 2022 via teleconference.
2. The applicants, [REDACTED], hereinafter referred to as "landlord1" and "landlord2" participated in the hearing. As did the respondent [REDACTED], hereinafter referred to as "the tenant".
3. An affidavit of service was provided by the tenant confirming that the landlords were served electronically on 27 November 2022 (T#1). The landlords confirmed receipt of service. Landlord1 testified that the tenant was served electronically of their counter claim on 02 December 2022 (L#1). The tenant disputed receiving an attachment on this email, however, landlord1 provided additional proof that attachments were indeed included on the email sent (L#2). Consequently, I determined that this was good service.
4. The details of the claim were presented as an originally fixed term rental agreement that started in spring 2018 for which a written agreement was provided (L#3). Monthly rent was set at \$995.00 and a security deposit was collected in the amount of \$400.00 according to this agreement.
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. The standard of proof, in these proceedings, 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 following:
 - Validity of Termination Notice determined;
 - Compensation paid for inconvenience in the amount of \$1,600.00;
 - Rent reduced in the amount of \$995.00 until repairs are made.
7. The landlords are seeking the following:
 - Rent to be paid in the amount of \$995.00;
 - Late fees to be paid in the amount of \$75.00; and
 - An order for vacant possession of the rental premises;

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, 14, 15, and 19 of the *Act*.

Preliminary Matters

10. The tenant resides in the main floor suite of the rental premises located at [REDACTED]. There is also a separate basement apartment.
11. Landlord1 acknowledged a \$400.00 security deposit and expressed a desire to hold on to this deposit in case there are damages in the rental premises after the tenant vacates.
12. Regarding the tenant's claim for rent to be reduced in response to a documented request for repairs that had been issued (T#2), landlord1 testified that the tenant was in arrears at the time she issued this request (28 September 2022) and asked that it be discontinued. According to the rent ledger submitted (L#4) and reviewed by all parties during the hearing, had rental arrears in the amount of \$740.00 between 16 September and 30 September 2022. Consequently, in accordance with Residential Tenancies Policy 04-02, Tenants' Request for Repairs, the tenant's associated request for rent to be reduced until repairs are completed, was not considered in this hearing.

Issue 1: Compensation for Inconvenience (\$1,600.00)

Tenant's Position

13. The tenant referred to an invoice submitted in the amount of \$780.00 (see page 1 in T# 3) and an invoice in the amount of \$320.00 (see page 2 in T#3). The tenant testified that the larger invoice related to clean up that she completed after a

water leak in the basement apartment entered into her laundry room. Regarding the smaller invoice, the tenant testified that this was related to her staining the deck at the rental premises in summer 2022. The tenant testified that she is also seeking compensation in the amount of \$500.00 for various items related to her experience of being without water for approximately 12 hours after the evening leak that triggered her cleaning invoice in the amount of \$780.00 (T#4).

14. Regarding the two invoices submitted, the tenant acknowledged in response to questioning, that she was never at any point requested by either landlord to clean or stain the deck for money. Specific to the cleaning, the tenant testified that she cleaned her premises because the landlords were busy with the source of the leak, and specific to the deck, the tenant testified that landlord1 previously told her that she could do work at the rental premises.

Landlords' Position

15. Landlord1 testified that he was surprised by the invoices submitted to him by the tenant and that he never, at any point, requested that she complete the work captured by either invoice. Regarding the tenant's recollection of a conversation with the landlord and work at the premises, landlord1 testified that his offer was specific only to yard work and that he never offered to provide financial compensation for any yard work done by the tenant.
16. Specific to the leak in the basement apartment, landlord1 testified that this leak was reported on a Friday evening and he completed all repair work by late the following morning. Landlord1 acknowledged that his rental premises only has a single water shut off valve and testified that he and his wife attempted to support the tenant to the best of their ability while the water was shut off. Landlord1 testified that they specifically asked if the tenant was ok in the premise and if she needed drinking water, and was told that she was ok. Landlord1 referred to a written document that he submitted outlining all of this information (L#5).

Analysis

17. The tenant claimed \$1,600.00 for inconvenience and the landlords disputed this claim. I will address each of the tenant's three claims in turn:

Analysis - Invoice for \$780.00

18. I note that invoice includes:
 - i. \$500.00 for 20 hours of labour
 - ii. \$60.00 for cleaning supplies
 - iii. \$220.00 for replacing items damaged by the floor.
19. Specific to the claim for labour, I note that the landlord and tenant agreed that the tenant was never explicitly hired to complete cleaning work. As such, I find that the tenant failed to establish on the balance of probabilities that she is entitled to compensation for labour in the amount claimed. Specific to the tenants claim for materials and items lost, the tenant did not provide any verifiable documentation

related to these claims. Consequently, I find that the tenant's claim for compensation for inconvenience related to any work she completed following the water leak, does not succeed in any amount.

Analysis - Inconvenience \$500.00 related to water shut off

20. Specific to the tenant's related claim for compensation for inconvenience in the amount of \$500.00 for 12 hours without water at the rental premises, I note that the tenant and landlords disagreed on any communications related to this event. Where the tenant testified to suggest she was left alone to make do, I found that the landlords successfully established that they did everything reasonable to comfort the tenant for the 12 hours she was without water. Considering that the leak occurred on a Friday night and it was resolved by Saturday morning, I am satisfied that the landlords did everything possible. Consequently, I find that the tenant's claim for compensation in the amount of \$500.00 does not succeed in any amount.

Analysis - Invoice for \$320

21. Regarding the tenant's claim for compensation related to staining the deck, I find that the tenant failed to establish on the balance of probabilities that she was specifically hired by the landlords to complete this work. Consequently, her claim for compensation for inconvenience does not succeed in any amount.

Summary of Decision – Compensation for Inconvenience

22. The tenant's claim for compensation for inconvenience does not succeed in any amount.

Issue 2: Payment of Rent (\$995.00)

Landlords' Position

23. Landlord1 referred to the rent ledger submitted and testified that he is currently owed \$995.00 in rent for the month of December 2022 (L\$4). He testified that the tenant paid November rent on 25 November 2022.

Tenant's Position

24. The tenant acknowledged not paying rent for December 2022 and committed to paying it by Etransfer.

Analysis

25. I accept that the landlords and tenant agree that rent has not been paid for December 2022. Because the landlords are seeking an order of vacant possession, I find that they are entitled to payment of rent to the day of the hearing (\$457.94) and payment of a rental per-diem (\$32.71) for each day from 15 December 2022 onward that the tenant retains possession of the rental premises.

$\$995.00 \times 12 = \$11,940.00 / 365 = \$32.71$

$\$32.71 \times 14 = \457.94 for rent December 1 through December 14 2022

Decision

26. The landlord's claim for rent succeeds in the amount of \$457.94.
27. The landlord is entitled to an order for payment of a daily rate of rent in the amount of \$32.71, beginning 15 December 2022 and continuing to the date that the landlord obtains possession of the rental unit.

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

Landlord's Position

28. Landlord1 clarified that he is only seeking payment of late fees in the amount of \$49.00 to represent the period in November 2022 when rent was not paid.

Tenant's Position

29. The tenant disputed owing late fees and testified that landlord1 previously informed her that so long as she paid every two weeks, it would be ok.

Analysis

30. 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.

31. 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.

32. Landlord1 is looking for payment of late fees between 02 November and 24.

November 2
November 3 – 24 = 22 days
22 days x \$2.00 = \$44.00

Decision

33. The landlords claim for late fees succeeds in the amount of \$49.00.

Issue 4: Vacant Possession of Rented Premises

Landlords' Position

34. The landlords' submitted copies of two section 19 termination notices that had been issued to the tenant. The first notice (L#6) was issued on 03 October 2022 with a stated move out date of 19 October 2022. Landlord1 testified that all arrears were paid prior to this move out date. The second termination notice was issued on 08 November 2022 with a stated move out date of 23 November 2022. Landlord1 testified that arrears were paid on 25 November 2022 and that the notice had been served personally to the tenant.
35. According to the landlord's records, the tenant owed \$995.00 in rent on the day the November termination notice was issued. The landlords are seeking an order for vacant possession of the rented premises because arrears remained on the account on the stated move out date of 23 November 2022.

Tenant's Position

36. The tenant testified that she paid arrears on 25 November 2022 with the consent of the landlords and that this should mean that the termination notice issued on 08 November 2022 is removed like the October termination notice.

Analysis

37. Section 19 of the *Residential Tenancies Act, 2018* states:

Notice where failure to pay rent

19. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),

...

(b) where the residential premises is

(i) rented from month to month,

(ii) rented for a fixed term, or

(iii) a site for a mobile home, and

the amount of rent payable by a tenant is overdue for 5 days or more, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 10 days after the notice is served on the tenant.

(2) Notwithstanding subsection (1), where the tenant pays the full amount of the overdue rent, including a fee under section 15, before the date specified in the notice under paragraph (1)(a) or (b), the rental agreement is not terminated and the tenant is not required to vacate the residential premises.

38. According to the landlord's records, on 08 November 2022, the day the termination notice was issued, the tenant was in arrears in the amount of \$995.00. As the notice meets all the requirements set out in this section of the Act, and as it was properly served, it is a valid notice.

Decision

39. The landlord's claim for an order for vacant possession of the rented premises succeeds.
40. The tenant shall pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

Issue 5: Security Deposit \$400.00 Relevant Submissions

41. The rental agreement provides evidence of a \$400.00 security deposit (L#3). The tenant initially testified that she believed that she paid a \$500.00 security deposit. Likewise, landlord1 initially testified that he wished to retain the full value of the security deposit in case the tenant caused damages and he needed the money to repair damages in the rental premises.

Analysis

42. 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.

43. There are two things to decide. The first is the amount of the security deposit collected. Because there is an amount of \$400.00 identified in a rental agreement signed by the tenant, I find that the landlord is holding a \$400.00 security deposit. The second is the landlords' entitlement to retain the security deposit. Because I found that the landlords are entitled to payment for rent and late fees in excess of the security deposit collected, I find that they are entitled to retain the full amount.
44. Regarding landlord1's request to retain the full value of the security deposit for future damages, the term is defined in part within the Act as money held for security against a liability of the tenant. Because rent owing is a liability, I found that the security deposit will be applied in this dispute.

Decision

45. The landlord shall retain the full value of the \$400.00 security deposit.

Issue 5: Hearing Expenses

46. The tenant claimed the \$20.00 expense of applying for the hearing along with the \$50.00 expense of hiring a process server to provide the landlords with notice of her claim. Because the tenant's claim was not successful, the landlords are not required to pay this expense.


Summary of Decision

47. The landlords are entitled to the following:

- To retain the full value of the \$400.00 security deposit.
- An order for vacant possession of the rented premises.
- An order for payment from the tenant in the amount of \$106.94 determined as follows:
 - a) Rent..... \$457.94
 - b) Late Fees.....\$49.00
 - c) LESS Security Deposit.....(\$400.00)
 - d) Total.....\$106.94
- An order for payment of a daily rate of rent in the amount of \$32.71, beginning 15 December 2022 and continuing to the date the landlord obtains possession of the rental unit.
- The tenant shall also pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

20 December 2022

Date


Jaclyn Casler
Residential Tenancies Tribunal