

Residential Tenancies Tribunal

Application: 2022 No. 1004 NL
2023 No. 0037 NL

Decision 22-1004-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:03 AM on 16 January 2023 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant”, participated in the hearing.
3. The respondent, [REDACTED], hereinafter referred to as “landlord1”, participated in the hearing. His spouse, [REDACTED], hereinafter referred to as “landlord2” also participated in the hearing on the request of landlord1.
4. An affidavit of service was provided by the tenant (T#1) confirming that she served the landlord by registered mail on 20 December 2022. A review of the tracking number and proof of service confirmed that this information was received on 22 December 2022. Landlord1 confirmed service. He also provided an affidavit of service declaring that he served the tenant by text on 12 January 2023 and proof of service was provided (L#1). I found this to be inadequate service by the landlord, however, the tenant waived her right to service and asked to proceed with the hearing of both her claim and the landlords’ counterclaim.
5. The details of the claim were presented as a month-to-month agreement that started in October 2016, for which an original written agreement was provided (L#0). Monthly rent was originally set at \$800.00 and then reduced to \$600.00. As shown in the rental agreement, a security deposit in the amount of \$400.00 was collected.
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. 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

7. The tenant is seeking the following:
 - Rent refunded in the amount of \$4,200.00;
 - Compensation for inconvenience in the amount of \$9,760.00;
 - Possessions returned in the amount of \$21,480.00; and
 - Security deposit refunded in the amount of \$600.00.
8. The landlord is seeking the following:
 - Compensation for inconvenience in the amount of \$21,000.00;
 - Compensation for damages in the amount of \$37,388.06; and
 - An order to retain the full value of the \$600.00 security deposit against monies owed.

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 10, 16, 32 and 33 of the *Act*.

Preliminary Matters

11. The rental premises is a house located at [REDACTED]. The tenant resided there with her two teenager daughters. As shown in her rental agreement, she originally resided there with a boyfriend as well. However, landlord1 testified that this individual vacated more than a year prior. He further testified that the tenant subsequently resided in the premises with a different boyfriend, however, the tenant testified that this individual would only visit.
12. Of note is that landlord1 applied for an order of vacant possession on 09 August 2022 (L#2) which he was granted on 21 September 2022 (L#3 see Order No. 2022 – 672-NL). Landlord1 testified that this order was granted after he served the tenant with a section 18 notice of termination in March 2022, with a stated move out date of 30 June 2022. Landlord1 and the tenant agreed that the tenant vacated the premises on 17 October 2022, after being removed by the sheriff.
13. Both parties originally identified a security deposit in the amount of \$600.00 as having been paid. However, both parties also agreed during review of the original written rental agreement, that only a \$400.00 security deposit was collected.

Issue 1: Refund of Rent (\$4,200.00)

Tenant's Position

14. The tenant testified that she should be refunded rent that was paid in her name after landlord1 blocked the driveway at the rental premises by parking three trailers across different sections. Multiple pictures of these trailers were submitted and the tenant testified that the trailers were parked on 06 August 2022 (T#3).
15. The tenant also testified that she is entitled to the refund of rent paid in her name for October 2022 after she was removed by the sheriff from the rental premises on 17 October 2022. She provided documentation from the Department of Children, Seniors & Social Development as evidence of rent payments made between April 2022 and October 2022 (T#3).

Landlords' Position

16. Landlord1 testified that there is a front and a back driveway for the rental premises. He agreed that he parked his trailers in the tenant's driveway. Landlord1 testified that he did this because the tenant was supposed to have vacated on 30 June 2022 and he wanted to monitor who is residing in the rental premises.

Analysis

17. Landlord1 and the tenant agreed that landlord1 parked three trailers in the driveway of the rental premises. Both parties also agreed that this was deliberately done by landlord1 to prevent the tenant from parking vehicles close to the house. As such, I find that the actions of landlord1 in removing driveway access, represent the discontinuation of a "*service, privilege, privilege, accommodation or benefit*" in accordance with section 16(5) of the *Act*. This means that the landlord effectively increased the tenant's rent by removing a benefit (e.g., the driveway) but kept rent at the same amount. I find that landlord1 did not provide notice of this rental increase, as is required by section 16 of the *Act*.
18. Consequently, I also find that the tenant successfully established on the balance of probabilities that she is entitled to the refund of rent paid between August 2022 and October 2022. However, I do not accept that she is entitled to the full return of rent paid (e.g., 4 x \$600.00) because I was not convinced that the landlords otherwise blocked or prevented her from general use and occupation of the rental premises itself. As such, I must instead estimate to the best of my ability, the portion of the \$600.00 monthly rent that fairly represents the value of front and back driveway access to the rental premises.
19. Recognizing that landlord1 blocked the tenant's driveway access for partial months of August 2022 (e.g., from 06 August onward) and October 2022 (after

the tenant was removed by the sheriff on 17 October 2022) I will arbitrarily award \$50.00 compensation for each month that rent was paid while the driveway was blocked by landlord1's trailers. This means, that I find the tenant is entitled to the refund of \$150.00 (e.g., 3 x \$50.00) in rent from the landlords due to driveway access being blocked by landlord1.

20. Regarding the tenant's supplemental claim for return of rent for October 2022, I find that she is entitled to the return of rent in the amount of \$276.22. This amount represents rent paid in her name between 18 October 2022 and 31 October 2022 (e.g., after she was removed from the premises).

$$\$600.00 \times 12 = \$7,200.00 / 365 = \$19.73$$

$$\$19.73 \times 14 = \$276.22 \text{ for rent paid between 18 and 31 October 2022}$$

Decision

21. The tenant's request for return of rent succeeds in the amount of \$426.22 (e.g., \$276.22 + \$150.00).

Issue 2: Tenant Compensation for Inconvenience (\$9,760.00)

Tenant's Position

22. The tenant submitted a written ledger outlining her claims for inconvenience and her request for compensation in the amount of \$9,905.00 (T#4). According to this ledger, she is seeking compensation for the following:
- Having to carrying things due to blocked driveway \$3,000.00
 - Being without water for 19 days \$3,000.00
 - i. Including a \$70.00 charge for water for three people
 - 15 days at a motel \$1,800.00;
 - Motel related food, gas and other necessities \$1,735.00 (e.g., \$480.00 + \$675.00 + \$480.00 \$100.00).
 - Expired food in the refrigerator \$300.00
23. The tenant elaborated on her written claim and testified that she should be entitled to compensation for the extra physical effort that was required while her driveway was blocked by landlord1's trailers. She also testified that she was informed by the "Residential Tenancies Act" that landlord1 should be charged under section 51 of the *Act*, **Offence** for his actions in blocking her driveway.
24. Regarding the claim for being without water for 19 days, the tenant testified that the rental premises had no water between 29 September 2022 and 17 October 2022, the day she was removed by the sheriff. She also testified that she had the source of the leak addressed on 29 September 2022, but that the water was never turned back on.

25. The tenant testified that she is seeking post eviction compensation for two reasons. The first is that she was only given 72 hours notice, and the second is that the landlord1 did not remove his trailer from the back driveway, thereby preventing her from moving her belongings from the main floor of the rental premises. The tenant acknowledged that the landlord removed two of his trailers, allowing access to the basement door after the sheriff first arrived at the property. She testified that even with this access, she was not able to remove her possessions from the main floor of the rental premises.
26. The tenant testified that she did not submit receipts for the inconvenience amounts claimed because she did not know that receipts were needed.

Landlords' Position

27. Landlord1 testified that he is not paying compensation for the driveway blockage because he only moved in his trailers after the tenant failed to vacate the rental premises on 30 June 2022. Regarding her claim for compensation for the being without water, landlord1 testified that he requested that the Town keep the water turned off until he investigated the leak. He acknowledged that he never requested the Town turn the water back on. He testified that he was not able to investigate the source of the leak because he was worried about the tenant's boyfriend and did not feel comfortable attending to the rental premises. Landlord1 further testified that he did not at any point issue a 24 hour notice to inspect the premises while the water remained off. He also testified that he believed the tenant illegally turned the water back on to the premises, because the water was allegedly working when he took possession of the premises.
28. Landlord1 disputed the tenant's claim for compensation for the motel and stated that he would not pay for this because the tenant was evicted and he had to have her removed by the sheriff. He also testified that the sheriff gave the tenant 7 days, which is considerably more than the 72 hours she claimed.
29. Regarding the general impact of the blocked driveway, landlord1 testified that it is "only 60 feet" from the road to the house. He testified that he removed the two trailers from the front driveway after the sheriff first visited so that the tenant could pull her vehicle up to the basement door and remove her possessions. Landlord1 testified that he did not remove his trailer from the back of the premises because a wheel was flat and he previously noted that the back deck was rotted. He testified that the tenant could have removed her possessions from the main floor through the basement.

Analysis

30. Regarding the tenant's assorted claims for compensation after she was evicted from the rental premises, I agree with the landlord1 that they are not valid because the tenant could have reasonably predicted that the charges would be

incurred. I have therefore struck the following expenses from the tenant's claim as they all relate to the period of time immediately after the tenancy ended:

- 15 nights motel \$1800
 - Food for 16 days for 3 people \$480)
 - Restaurant meals \$675.00
 - Gas for 12 days \$480.00
 - Everyday necessities \$100.00
 - Expired food at rental premises \$300.00
31. Regarding comments made by the tenant arguing that landlord1 should be charged under section 51 of the *Act*, for his actions in blocking her driveway after she failed to vacate his premises as requested, I note that only the Director of Residential Tenancies has the legal authority to “*direct a tenant to vacate the residential premises on a specified date*” as per 47(1)(e) of the *Act*. Where landlord1 testified that he specifically blocked the driveway of his rental premises because the tenant did not vacate, I find that such actions represent a seeming effort by landlord1 to effectively take the law into his own hands.
32. Given however, that the Director also has the ability to “*direct a landlord to compensate a tenant for a loss suffered or expense incurred as a result of a contravention of this Act or rental agreement*” under 46(1)(d) of the *Act*, I will decide on an appropriate financial award for inconvenience experienced.
33. Where I previously awarded compensation in the amount of \$150.00 for loss of the driveway, I will also consider compensation for the inconvenience of the loss of the driveway, which as depicted by the tenant in her inconvenience ledger, meant that “*everything had to be carried up a long hill*”. I also recognize the inconvenience of no immediate access to the main floor entrance for moving. Consequently, I will arbitrarily award the tenant compensation in the amount of \$500.00 for inconvenience suffered as a result of the driveway blockage.
34. Regarding the tenant's claim for compensation in the amount of \$3,070.00 for the allegedly 19 days that there was no water at the rental premises, I find this to be extreme. However, I also accept the testimony from landlord1 that he explicitly instructed the town to not turn the water back on until he investigated. I also accept that he never investigated and consequently, I find that the tenant established on the balance of probabilities that her family was indeed without water during the final 19 days of her tenancy. Consequently, I will arbitrarily award the tenant compensation in the amount of \$500.00 for inconvenience suffered.

Decision

35. The tenant's claim for compensation for inconvenience succeeds in the amount of \$1,000.00 (e.g., \$500.00 + \$500.00).

Issue 3: Possessions Returned \$21,480.00

Tenant's Position

36. The tenant submitted a written summary of possessions to be returned (T#5) and testified that this represents possessions left on the main floor of the premises. She submitted a series of photos taken prior to vacating so as to visually represent possession left on the main floor of the premises (T#6). The tenant testified that she was unable to remove these items prior to being removed by the sheriff because of the tight timeline and because access to the main floor of the rental premises was blocked by landlord1's trailer. The tenant testified that she has since been able to gather some of her belongings, but that most remain at the premises.

Landlords' Position

37. Landlord2 testified that she is a cousin of the tenant and that she has tried multiple times to have the tenant's possession returned. Landlord1 testified that he refuses to have the tenant back at the premises, but that he is willing to otherwise assist in having the possessions returned. He testified that he previously bagged up the majority of the tenant's possessions and moved them from the main floor of the premises to a shed/garage on the property. The landlord testified that neither the rental premises nor the shed/garage are heated and that he believes the tenant's belongings to be safe in a locked facility.
38. Landlord2 testified that the furniture remains in the main floor of the rental premises and landlord1 testified that he has not applied to this tribunal to dispose of abandoned possessions. After being told of the potential delay between the hearing date and when my written decisions would be released, landlord1 asked for the tenant's address so that he could deliver all of her possessions from the rental premises.

Analysis

39. I accept that the tenant is seeking cost of replacement of possessions that were left in the rental premises. I also accept that the landlords have continued to keep these possession at the rental premises through to the day of the hearing. At no point, did I find that the landlords took the tenant's personal property for compensation, as is prohibited by section 33 of the *Act*. I further accept landlord1's offer to deliver all of the tenant's possessions to her new rental premises. Consequently, I find that I find that no grounds for making any sort of decision related to the tenant's possessions.

Decision

40. The tenant's claim for an order for payment in compensation for missing possessions does not succeed in any amount.

Issue 4: Compensation for Damages (\$37,388.06)

General Considerations

41. 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).
42. 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.

Landlord's Position

43. Landlord1 testified that the rental premises is approximately 40-50 years old and that he completely renovated its interior and exterior in 2013. Landlord1 testified that he was also required to subsequently replace the flooring in the main floor bedrooms in 2015/16 and that he painted the interior of the premises prior to it being occupied by the tenant. Landlord1 testified that he did not submit pictures or other documentation related to the state of the rental premises prior to it being occupied by the tenant. A series of photos were submitted of the state of the premises post occupancy (L#4).
44. Landlord submitted a quote from [REDACTED] in the amount of \$27,968.00 for assorted work, including flooring replacement in the rental premises (see page 1 in L#5). He also submitted a quote in the amount of \$9,420.06 for the purchase of related materials that would be needed in the repair work (see page 2 in L#5). Landlord1 testified that the house was damaged by smoke and cat feces and denied previously approving the tenant's cat.

Tenant's Position

45. The tenant denied the landlord's claim for compensation for damages and testified that her daughters' cats were approved by landlord1.

Analysis

46. The landlords did not provide verifiable documentary or other evidence related to the state of the rental premises prior to occupancy by the tenant and her family in 2016. Consequently, I was unable to verify what, if any damages may have been

caused by the tenant and her family. Furthermore, because the landlords provided only a general quote from the contractor (e.g., costs by task/job not identified) I find that the landlords did not provide me with the information required to potentially calculate job specific compensation, such as replacement of floors, in accordance with the test identified in paragraph 42. Consequently, I find that their claim for compensation for damages does not succeed in any amount.

Decision

47. The landlords' claim for compensation for damages does not succeed in any amount.

Issue 5: Landlord Compensation for Inconvenience (\$21,000.00)

Landlords' Position

48. Landlord1 submitted a written summary of his claim for compensation for inconvenience in the amount claimed (L#6). He testified to the following:
- That he was unable to enter his rental premises between 01 July 2022 and 17 October 2022 and that he valued this experience at \$5,000.00. He also testified, that at no point did he issue a landlord's notice to inspect, or call the police to assist with inspections of his rental premises.
 - That he was unable to prepare the house for sale because the tenant's belongings were left behind in the rental premises. He valued this experience at \$5,000.00.
 - That the tenant left behind a vehicle and a couch in the yard and that removing this items cost him \$1,000.00. Pictures were provided of the items (L#4), but receipts were not.
 - That damages caused by the tenant resulted in the landlords allegedly losing a property sale, an experience they valued at \$10,000. Landlord1 testified that he would receive a lower sale price today for the house than he would have if it sold in summer 2022.

Tenant's Position

49. The tenant denied inconveniencing the landlords. She also denied ownership of the car allegedly left at the property, and testified that the couch in the yard was there when she took occupancy in 2016.

Analysis

50. Regarding the landlords' assorted claims for inconvenience, I find that he failed to establish on the balance of probabilities that he was entitled to compensation.

With respect to his claims that the tenant's overholding of her lease caused him financial inconvenience, I found that the tenant's rent was duly paid for the duration. Furthermore, I have also previously discussed in this report, how the Director of Residential Tenancies is the only body authorized to issue orders of eviction. Considering that landlord1 only applied to this tribunal for the requested order of vacant possession (e.g. 2022-0672-NL) on 09 August 2022 after issuing the tenant a three month notice of eviction in March 2022, I find the landlords to be the source of their inconvenience. Consequently, I find that they are not entitled to financial compensation related to the timeline of the tenant's eviction by the sheriff on 17 October 2022.

51. Regarding the landlords' claims for compensation related to possessions left at the premises by the tenant, I was not convinced that the landlords made any tangible effort to mitigate potential loss as is required by 10(1)(4) of the *Act* and consequently find that they are also not entitled to any compensation for these claims.

Decision

52. The landlords' claim for compensation for inconvenience do not succeed in any amount.

Issue 6: Security Deposit \$400

Relevant Submissions

53. Both parties agreed that a \$400.00 security deposit was collected by the landlord. The tenant requested that the full amount of the security deposit be returned and the landlords requested that they retain the full amount against monies owed.

Analysis

54. 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.

55. Where the landlord's claims for compensation have not succeeded in any amount, I find that the tenants is entitled to the full return of the \$400.00 security deposit.

Decision

56. The landlord shall return the full amount of the \$400.00 security deposit to the tenant.

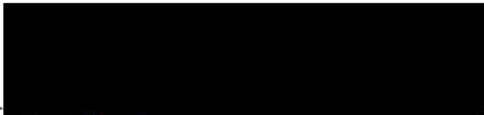
Summary of Decision

57. The tenant is entitled the following:

- Refund of the full \$400.00 security deposit;
- An order for payment from the landlords in the amount of \$1,826.22, determined as follows:
 - a) Rent Refunded.....\$426.22
 - b) Compensation for Inconvenience.....\$1,000.00
 - c) Security Deposit Refunded.....\$400.00
 - d) TOTAL.....1,826.22

24 January 2023

Date


Jaclyn Casler
Residential Tenancies Tribunal