

Residential Tenancies Tribunal

Application 2022 No. 1021 NL

Decision 22-1021-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 1:49 PM on 11 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 “the landlord” also participated in the hearing.
4. The tenant provided an affidavit of service confirming that she served the landlord by email ([REDACTED]) on 04 December 2022 (T#1). Proof of service and proof of the landlord’s email was also provided (T#1). The landlord testified that she found this information in her Junk email at a later date causing her to not submit a counter claim in time for this hearing.
5. The details of the claim were presented as a verbal rental agreement that started in December 2020 and terminated 30 October 2022. Monthly rent was initially set at \$700.00 and then increased to \$750.00 in July 2021. A security deposit in the amount of \$350.00 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. 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 the following:
 - An order for refund of rent in the amount \$800.00.
 - An order for return of the security deposit in the amount of \$350.00.

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 and 16 of the *Act*.

Preliminary Matters

10. The rental premises is a basement unit located at [REDACTED]. The tenant testified that she took occupancy in late November 2020. The landlord and tenant agreed that the tenant vacated at the end of October 2022 but disagreed on obligations for rent. Consequently, I permitted both parties to submit their own records of related conversation Facebook Messenger after the hearing so that I could better understand why and when the tenancy terminated.

Issue 1: Refund of Rent \$800.00

Tenant's Position

11. The tenant testified that she spent three months looking for a place prior to taking occupancy of the rental premises with her young son. Due to this, the tenant testified that she did not argue with the landlord when she was messaged on 07 May 2021, that rent would be increasing by \$50.00 a month effective 01 July 2021. Proof of this Facebook message chain was provided (T#3). The tenant testified that she is seeking a refund of rent in the amount of \$800.00 representing the 16 months of her tenancy that she paid more rent than originally required, as shown in her ledger (T#3). The tenant also provided proof of all payments made to the landlord (T#4).
12. The tenant testified that she vacated the rental premises at the end of October 2022 and paid rent in full for that month. She testified that she left at this time because the landlord contacted her in early October 2022, informing her that she was to vacate by 30 November 2022 and to leave ASAP if she found something. Proof of related Facebook Messenger communications was provided (T#4).

Landlord's Position

13. The landlord agreed that she sent the tenant the Facebook message referred to in paragraph 11. She also agreed that she requested the rent increase and testified that it should be considered legal because the tenant did not argue. The landlord testified that the tenant owes her rent because she left at the end of October 2022 instead of the end of November 2022 as requested by the landlord. The landlord submitted communication screenshots between herself and the tenant (L#1).

Analysis

14. The landlord and tenant agreed that rent was increased in July 2021, less than 12 months after the verbal rental agreement started in December 2020. The landlord and tenant also agreed that notice of this rental increase was provided by Facebook Messenger on 07 May 2021, to take effect 01 July 2021. I find that both this requirement for rental increase as well as the form of notice provided, are contrary to section 16 of the Act, which states:

Rental increase

16. (1) Notwithstanding another Act, agreement, declaration, waiver or statement to the contrary, a landlord shall not increase the amount of rent payable by a tenant,

(a) where the residential premises is rented from week to week or month to month, more than once in a 12 month period;

(2) Notwithstanding subsection (1), a landlord shall not increase the amount of rent payable by a tenant during the 12 month period immediately following the commencement of the rental agreement.

(3) Where a landlord increases the amount of rent payable by a tenant, the increase shall be effective on the first day of a rental period, and the landlord shall give the tenant written notice of the increase

(b) not less than 6 months before the effective date of the increase where the residential premises is rented from month to month or for a fixed term.

(4) In addition to the requirements under section 34, a notice under subsection (3) shall

(a) be signed by the landlord;

(b) state the effective date of the increase;

(c) *state the amount of the increase;*

(d) *state the amount of rent payable when the increase becomes effective; and*

(e) *be served in accordance with section 35.*

15. Consequently I find that the tenant is entitled to refund of rent in the amount of \$50.00 a month for each month that rent was paid in the amount of \$750.00 paid between July 2021 and October 2022. My reasons for this finding are as follows:
- The tenant was required to pay an increased rate of rent before “a 12 month period” elapsed since the start of her rental agreement.
 - The landlord’s message of the rental increase was incomplete – it did not provide all information required by the *Act*; and
 - The landlord’s notice of rental increase provided less than two months notice of the increase – legislation requires a minimum 6 months notice required prior to a rental increase taking effect.
16. Regarding the tenant’s exact entitlement to rent to be refunded, I accept that the tenant paid rent in the amount of \$750.00 for the final month (e.g., October 2022) that she retained possession of the premises. I further accept the tenant’s calculations and find that the landlord is required to refund her \$800.00 for 16 months (e.g., July 2021 through to October 2022) of rent paid at \$750.00 instead of the originally established monthly rental amount of \$700.00.

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17. The tenant’s claim for refund of rent succeeds in the requested amount of \$800.00.

Issue 2: Security Deposit (\$350.00)

Relevant Submissions

18. The landlord and tenant agree that a \$350.00 security deposit was collected. The landlord testified that she has a claim against this security deposit and that she is submitting an application for dispute resolution seeking compensation for damages.

Analysis

19. 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.

20. The tenant has requested the full return of the \$350.00 security deposit. I find that she is entitled to this money because the landlord failed to submit a counterclaim within the required 10 days of being served notice of the tenant's claim on 04 December 2022.

Decision

21. The tenant is entitled to the return of the \$350.00 security deposit.

Summary of Decision

22. The tenant is entitled to the following:

- The return of the \$350.00 security deposit;
- Return of rent in the amount of \$800.00 from the landlord; and
- Payment from the landlord in the amount of \$1,150.00 determined as follows:

a) Refund of rent.....	\$800.00
b) Security Deposit.....	\$350.00
c) Total.....	<u>\$1,150.00</u>

19 January 2023

Date



Jaclyn Casler
Residential Tenancies Tribunal