

Residential Tenancies Tribunal

Applications 2022 No. 1026 NL
2022 No. 1093 NL

Decision 22-1026-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 11:07AM on 26 January 2023 via teleconference.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as "tenant1" and "tenant", participated in the hearing. As did the respondent, [REDACTED] [REDACTED], hereinafter referred to as the landlord. The landlord's wife, [REDACTED] [REDACTED], did not participate in the hearing, but was represented by the landlord.
3. Two affidavits of service (T#1) and proof of service (T#2) were provided by the tenants confirming that the landlords were served notice of their claim by email on 12 December 2022. The landlord confirmed service. The landlord also submitted two affidavits of service (L#1) and proof of service (L#2) confirming that the tenants were served notice of the counter claim by email on 16 December 2022. The tenants confirmed service.
4. The details of the claim were presented as a month-to-month agreement that started on 01 May 2022. Monthly rent was set at \$1,200.00 and a security deposit in the amount of \$600.00 was collected. It was a verbal rental agreement.
5. In a proceeding under the *Residential Tenancies Act, 2018*, 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 tenants are seeking the full return of their security deposit in the amount of \$600.00.

7. The landlords are seeking the following:
 - Payment of rent in the amount of \$276.15; and
 - An order for the security deposit to be retained against monies owed.

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 14 and 18 of the *Act*.

Preliminary Matters

10. The rental premises was vacated on 31 October 2022 and keys were left in the mail box because the landlord was not available as he was returning from work offshore.

Issue 1: Payment of Rent (\$276.15)

Tenants' Position

11. Tenant1 testified that they vacated on 31 October 2022 after giving notice in the middle of the month that they would be vacating. She testified that she paid rent for the whole month of May 2022 despite only taking occupancy near the end of that month, and that she attempted to arrange a walk through with the landlord prior to vacating.

Landlords' Position

12. The landlord testified that he received notice on 17 October 2022 that the tenants would be vacating at the end of the month. He also testified that he previously denied the tenants' request for an extra pet at the rental premises, just a week earlier. The landlord testified that his wife normally deals with all rental business, but that she currently has health problems. The landlord is seeking rent for 01 November 2022 until 07 November 2022 because the tenants gave inadequate notice and he was able to secure new tenants from 08 November 2022 onwards.

Analysis

13. I accept that the landlord and tenants agree that notice was given in the middle of October 2022 that the tenants would be vacating on 31 October 2022. I also accept that the landlord regained possession of the rental premises on 01 November 2022 and that he is seeking payment of rent for those first seven days of the month as he was able to secure a new tenant from 08 November 2022 onwards. Consequently, I accept that the landlord is entitled to payment of rent

as compensation for inadequate notice, contrary to 18(1)(b) of the *Act* which reads as follows:

Notice of termination of rental agreement

18. (1) A tenant shall give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises

(b) not less than one month before the end of a rental period where the residential premises is rented from month to month; and

14. I therefore calculate that the landlord is entitled to payment of rent in the requested amount of \$276.15, as shown below:

$\$1,200.00 \times 12 = \$14,400.00 / 365 = \$39.45$ rent per day
 $\$39.45 \times 7 = \276.15 for November 1 – November 7

Decision

15. The landlords' claim for compensation for rent succeeds in the amount of \$276.15.

Issue 2: Security Deposit (\$600.00)

Relevant Submissions

16. The tenants would like their security deposit returned in the full amount of \$600.00 and the landlord has applied for an order to retain a portion of it against monies owed.

Analysis

17. 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.*

18. Where the landlord's claim for payment of rent has succeeded in the amount of \$276.15, I find that he shall retain that portion of the security deposit. The remaining \$323.85 shall be returned to the tenants.

Decision

19. The landlords are entitled to retain \$276.15 of the security deposit.
20. The landlords shall pay to the tenants \$323.85, representing the return of the remaining security deposit.

Summary of Decision

21. The landlords' claim for compensation for rent succeeds in the amount of \$276.15.
22. The landlords are entitled to retain \$276.15 of the security deposit.
23. The landlord shall pay to the tenants \$323.85, representing the return of the remaining security deposit.

30 January 2023

Date


Jaclyn Casler
Residential Tenancies Tribunal