

Residential Tenancies Tribunal

Application 2022 No. 1062NL
Application 2023 No. 36NL

Decision 22-1062-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:06 AM on 19 January 2023 via teleconference, and was reconvened and adjourned on 13 February 2023.
2. The applicant, [REDACTED], hereinafter referred to as "the tenant", participated in the hearing. The respondent, [REDACTED], hereinafter referred to as "the landlord", was also in attendance. He was represented by [REDACTED] of [REDACTED].

Issues before the Tribunal

3. The tenant is seeking the following:
 - A determination of the validity of termination notice,
 - An order for a refund of rent in the amount of \$375.00,
 - An order for a refund of the \$350.00 security deposit,
 - An order for a payment of \$481.15 in compensation for inconvenience, and
 - An order for a payment of utilities in the amount of \$97.95.
4. The landlord is seeking the following:
 - An order for a payment \$960.00 in compensation for inconvenience, and
 - Authorization to retain the \$350.00 security deposit.

Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.

6. Also relevant and considered in this case are sections 10, 14, and 23 of the *Residential Tenancies Act, 2018* and policy 9-3: Claims for Damage to Rental Premises.

Issue 1: Validity of Termination Notice

Relevant Submissions

The Tenant's Position

7. The tenant stated that she had entered into a rental agreement with the landlord on 01 January 2013. The agreed rent was set at \$750.00 per month, which was paid semi-monthly, on the 1st and the 15th day of each month, and the tenant testified that she had paid a security deposit of \$350.00.
8. The tenant stated that the rental unit was a 3 bedroom apartment, and below her apartment were 2 other basement units that the landlord had also rented out. The tenant stated that during at least the last 2 years of her tenancy she had been having issues with the residents of one of these basement apartments. She complained that there was constant partying and loud music coming from that apartment, and she could also hear lots of screaming and shouting. She testified that she had to call the police numerous times and she also notified the landlord about the issue.
9. The tenant stated that despite the fact that she had made numerous complaints to the landlord, no action was taken and the problems with the basement apartment continued. As a result, the tenant served the landlord with a termination notice on 02 January 2022, and a copy of that notice was submitted with her application. That notice was issued under section 23 of the *Residential Tenancies Act, 2018*, and it had an effective termination date of 16 January 2022.
10. The tenant is seeking a determination of the validity of that notice.

The Landlord's Position

11. The landlord stated that he had no problem with the tenant's termination notice and he acknowledged at the hearing that it was valid.

Analysis

12. Statutory condition 7.(b), set out in section 10 of the Residential Tenancies Act, 2018, states

Statutory conditions

10. (1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:

7. Peaceful Enjoyment and Reasonable Privacy -

...

(b) The landlord shall not unreasonably interfere with the tenant's reasonable privacy and peaceful enjoyment of the residential premises, a common area or the property of which they form a part.

and section 23 of this Act states:

Notice where landlord contravenes peaceful enjoyment and reasonable privacy

23. (1) Notwithstanding subsection 18(1) and paragraph 18(3)(a), where a landlord contravenes statutory condition 7(b) set out in subsection 10(1), the tenant may give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises on a specified date not less than 5 days, but not more than 14 days, after the notice has been served.

(2) In addition to the requirements under section 34, a notice under this section shall

(a) be signed by the tenant;

(b) state the date on which the rental agreement terminates and the tenant intends to vacate the residential premises; and

(c) be served in accordance with section 35.

13. The landlord did not contest the tenant's claim that her peaceful enjoyment had been interfered with by the residents in the basement apartments. As the notice was properly dated and served, I find that it is valid.

Decision

14. The termination notice issued to the landlord on 02 January 2022 is a valid notice.

Issue 2: Refund of Rent - \$375.00

Relevant Submissions

The Tenant's Position

15. The tenant stated that although she had issued the landlord a valid termination notice, he would not accept that notice and he required that she pay the rent for the last 2 weeks of January 2022, even though she was no longer living there. The tenant is seeking a refund of that half-month's rent, a total of \$375.00.
16. The tenant stated that as the landlord had required that she pay that rent for the period from 16 January to 31 January 2022, she did not turn over the keys to the landlord until the end of that month. She claimed at the hearing that she considered herself, technically, to be the tenant for that period, and she was still responsible for the unit until 31 January 2022. As such, the tenant did not cancel her electrical account for that property until 31 January 2022, and she also maintained her tenant insurance for the whole month.

The Landlord's Position

17. █ argued that the tenant is not entitled to a rebate of rent as she not turned over the keys to the property until the end of January 2022, and she had use and access to the property during those last 2 weeks. She claimed that if the keys and the apartment had been turned over to the landlord on 16 January 2022, as per the termination notice, she would agree with the tenant that she did not have to pay rent for the second half of January 2022.

Analysis

18. I agree with the landlord in this matter. As the tenant had issued a valid termination notice to the landlord, this tenancy ended on 16 January 2022, and the tenant ought to have vacated on that date, and she should have turned the unit over to the landlord. As the tenant had not moved out on 16 January 2022, as per the termination notice, she is considered to be an over-holding tenant, and the landlord is entitled to rent up to the point that vacant possession of that property is given over to him. As the tenant was in possession of the unit up to the end of January 2022, I find that she is not entitled to any refund of rent that she had paid for that month.

Decision

19. The tenant's claim for a refund of rent does not succeed.

Issue 3: Utilities - \$97.95

Relevant Submissions

The Tenant's Position

20. The tenant argued that for the same reason that she is entitled to a refund of rent, for the period from 16 January to 31 January 2022, she also should not have been responsible for paying for her electrical utilities during that period either, and she is therefore entitled to a refund.
21. With her application, the tenant submitted a copy of her final electricity bill showing that she was charged \$71.83 for the period from 20 January to 31 January 2022, and she is seeking a refund of that amount. She also calculated that she is entitled to \$26.12 for the period from 16 January to 20 January 2022, for a total refund of \$97.95.

The Landlord's Position

22. [REDACTED] pointed out that the account was left in the tenant's name for the period from 16 January to 31 January 2022, and she pointed out that if the tenant had not wanted to incur the costs for her electricity use during this period, she could have cancelled her account on the day the tenancy was supposed to end.

Analysis

23. For the same reasons recounted in the previous section, regarding the tenant's claim for a refund of rent, I likewise find that she is not entitled to a refund of the costs of her electrical utilities.

Issue 4: Compensation for Inconvenience - \$481.15

Relevant Submissions

The Tenant's Position

24. This portion of the tenant's claim concerns the inconvenience she suffered as a result of having to move on short notice, as her peaceful enjoyment had been disturbed by the tenants in downstairs apartments.
25. The tenant stated that because of the behaviour of the downstairs' tenants, she was required to find a new apartment, and she incurred costs to physically move her possessions to that new apartment. She testified that she borrowed a truck from a friend of hers, and she submitted a receipt showing that she had purchased \$106.15 in gasoline. She is looking to have the landlord cover that cost.

26. The tenant also testified that she was required to pay a \$375.00 security deposit to her new landlord, and she stated that this was an expense that she would not have incurred had she not been required to find a new apartment.

The Landlord's Position

27. █ pointed out that the receipt for the gasoline shows that that purchase was made on 01 January 2022, a day before the termination notice was issued to the landlord.
28. █ also reiterated a point I had made to the tenant at the hearing, *viz.*, that the security deposit she had paid to her new landlord would be returned to her at the end of that tenancy, or used to cover any future liabilities of the tenant. As that money would eventually be returned, the tenant had not in fact suffered any loss.

Analysis

29. I agree with the tenant that she had incurred costs to move to her new apartment, and I also agree with her that these were costs that she would not have had to incur if the landlord had lived up to his statutory obligation to provide her with an apartment where her peaceful enjoyment would not be interfered with. Although I accept the tenant's claim that she had spent \$106.15 on gasoline on 01 January 2022, I was not persuaded that all of that gasoline was used for the move as the tenant stated at the hearing that she moved to an apartment on the same street. Even if she had to make numerous trips back and forth, I doubt that she would have used over \$100.00 in gasoline. I find \$25.00 to be fair.
30. The landlord is not responsible for the payment of the new security deposit, for the reasons stated in paragraph 28, above.

Decision

31. The tenant's claim for compensation for inconvenience succeeds in the amount of \$25.00.

Issue 6: Compensation for Damages - \$960.00

Relevant Submissions

The Landlord's Position

32. The landlord stated that the tenant had caused some damages to the unit during his tenancy, and with his application he provided the following list of the items that he had to repair:

- Paint and plaster bedroom
- Remove paint from floors
- Install and paint 2 interior doors
- Repair scratches and dings in hallway

The landlord is seeking \$960.00 in compensation for the costs of carrying out these repairs.

Paint and plaster bedroom

33. The landlord stated that one of the bedrooms had holes in the walls and that room needed to be repainted, including the ceiling. He also complained that there was paint on the floors in that room, as well as on the baseboards. With his application, the landlord had submitted 3 photographs showing walls in the rental unit. One is a photograph of a baseboard and wall, one shows a cable wire coming through a hole in a wall, and the third shows a beige or grey wall.
34. The landlord pointed to 2 receipts, one showing that he had paid \$112.15 for 2 gallons of paint, and the other showing that he had paid \$204.89 for another 5 gallons. He stated that this paint was used to repaint the 3 bedrooms, and he claimed that he then had to repaint the whole apartment so that it would "blend".
35. The landlord stated that these bedrooms were last painted in 2012 before the tenant moved in, while the other walls were painted about 5 years ago, when he had carried out renovations in the apartment.

Remove paint from floors

36. The landlord stated that there were holes put into some doors at the rental unit, there was a hole in the wall of one of the rooms where the tenant had fed a cable wire, and there was some paint on a baseboard.

Install and paint 2 interior doors

37. The landlord pointed to his photographs showing that holes had been drilled into 2 doors in unit to hang hooks. These hooks had come loose and the landlord stated that he had to replace these 2 doors, rehang them, and then repaint. He submitted a receipt with his application showing that he had paid \$195.48 for these 2 doors.

Scratches and dings in hallway

38. The landlord stated that there were some scratches and dings on the walls in the hallway. He also stated there were gouges on the floors in one of the bedrooms and he argued that this damage could not be attributed to normal wear and tear. No photographs were submitted showing the damage to the hallway walls.

The Tenant's Position

Paint and plaster bedroom

39. The tenant submitted into evidence 2 decisions rendered by this Tribunal concerning claims for damages. She pointed out that in 1 decision, the adjudicator ruled that a paintjob depreciates over time, and that it has an expected lifespan of 5 years. She reiterated the landlord's statement that the bedrooms were last painted 10 years ago, in 2012.
40. From the second decision, she pointed out that in order for a claim for damages to succeed, the landlord must show that the damages exist, and it must be established that these damages were caused by a deliberate or negligent act. The tenant argued that the photographic evidence submitted by the landlord does not establish that she had caused any damages to these walls, and he has also failed to establish that if there was any damage, that it was the result of any deliberate or negligent act.

Remove paint from floors

41. The tenant pointed out that the landlord had presented no evidence to show that there was any paint on the floors, and he presented no evidence to show the costs he had incurred to remove that paint.
42. Regarding the hole in the wall for the cable wire, the tenant stated that that was the condition of that wall when she moved in and she pointed out that there was not report of an incoming inspection showing if there were any deficiencies with the unit when the tenancy began 10 years ago.

Install and paint 2 interior doors

43. The tenant stated that these hooks were already on these doors when she moved in, and she again pointed out that there was no report of any incoming inspection showing the condition of the property when she moved in. She further pointed out that when she moved in, the landlord's parents were the ones taking care of this property, and the landlord only became involved with management of these units a few years after her tenancy began. She claimed that the landlord would therefore not have known the condition of these doors when she moved in.
44. The tenant also argued that the damage the landlord is identifying here is very minor, and she questioned whether he needed to replace the doors, and suggested these holes could have been repaired with plaster. She also pointed out that these hooks had not been installed with anchors, and after using those hooks for 10 years, as a result of normal wear and tear, they came loose. She again argued that the landlord had not established that this minor damage was the result of any deliberate or negligent act on her part.

Scratches and dings in hallway

45. The tenant pointed out that the landlord submitted no evidence showing that there was any damage caused to the walls in the hallway. She also pointed out that these walls were painted over 10 years ago, and as a result of depreciation, probably needed to be repainted anyhow. She also argued that the landlord had failed to establish that if there was any damage to these walls, that that damage was caused by any deliberate or negligent act on her part.

Analysis

46. Under Section 10.1(2) of the *Residential Tenancies Act, 2018* the tenant is responsible to keep the premises clean and to repair any damage caused by a willful or negligent act.

*2. **Obligation of the Tenant** - The tenant shall keep the residential premises clean, and shall repair damage caused by a wilful or negligent act of the tenant or of a person whom the tenant permits on the residential premises.*

Accordingly, in any damage claim, the applicant is required to show:

- That the damage exists;
- That the respondent is responsible for the damage, through a willful or negligent act;
- The value to repair or replace the damaged item(s)

In accordance with Residential Tenancies policy 9-3, the adjudicator must consider depreciation when determining the value of damaged property. Life expectancy of property is covered in Residential Tenancies policy 9-6.

Under Section 47 of the Act, the director has the authority to require the tenant to compensate the landlord for loss suffered or expense incurred as a result of a contravention or breach of the Act or the rental agreement.

Order of director

47. (1) After hearing an application the director may make an order

- (a) determining the rights and obligations of a landlord and tenant;*
- (b) directing the payment or repayment of money from a landlord to a tenant or from a tenant to a landlord;*
- (c) requiring a landlord or tenant who has contravened an obligation of a rental agreement to comply with or perform the obligation;*

(d) requiring a landlord to compensate a tenant or a tenant to compensate a landlord for loss suffered or expense incurred as a result of a contravention of this Act or the rental agreement

47. For the reasons given by the tenant at the hearing, I find that the landlord's claim for compensation for damages does not succeed.
48. Regarding the repainting of the bedrooms and the hallway, I agree with the tenant that the landlord had not submitted any persuasive evidence to establish that she had caused any significant damages to these walls, or that, if there was any damage, that it exceeded the standard of normal wear and tear. And as the tenant also pointed out, as landlords are expected to repaint a rental property every 3 to 5 years, and as these walls were last painted 10 years ago, these are costs the landlord would have soon incurred anyhow.
49. With respect to the holes in the doors for the hooks, and the hole in the wall for the cable, I also agree with the tenant that as there was no report of an incoming inspection, he had failed to establish that the tenant had installed these hooks during her tenancy or that she had installed that cable wire. And with respect to the doors, I further agree with the tenant that this damage is minor and would not justify an award for the costs of replacing these doors.

Decision

50. The landlord's claim for compensation for damages does not succeed.

Issue 7: Security Deposit

Relevant Submissions

The Tenant's Position

51. The tenant stated that she had paid a security deposit of \$350.00, and she writes on her application that that deposit was paid on 15 December 2012. The tenant stated that the landlord had not returned that deposit to her after she had moved out, and she testified that she had not entered into any written agreement with him on its disposition. She is seeking an order for a return of that full deposit.

The Landlord's Position

52. The landlord stated that he had no recollection of a security deposit being paid. He testified that he had consulted his records, and he was unable to locate a receipt for the payment of any deposit.

Analysis

53. Had the tenant paid a security deposit? The landlord intimated that because he had no memory of this payment, and because he had no record of it, that deposit was not paid. I do not accept that suggestion, and I find it more probable that the tenant had indeed paid a \$350.00 deposit to the landlord when this tenancy began. I found the tenant's testimony concerning this matter to be believable and credible, and no compelling reason was given as to why the tenant would not have paid a deposit, when the landlord stated that he routinely collects security deposits for all his tenancies.
54. The tenant pointed out at the hearing that the suggestion that no deposit was paid was inconsistent with things the landlord had said after the tenancy had ended and it was even inconsistent with what he had written on his application. According to the landlord's application, he also had written that the tenant had paid a \$350.00 security deposit, and through that application he had indicated that he was seeking an order authorizing him to apply that deposit against the money the tenant owes him in compensation for damages. Furthermore, the tenant read out a text-message exchange that she had had with the landlord after the tenancy ended, in which he stated that he would make a determination as to whether he would refund the deposit after he had completed an inspection of the rental unit.
55. Regarding the landlord's failure to recall the payment, that is easily accounted for—the payment was not made to him, but rather to his parents. The landlord only became involved with the management of these properties about 2 years after this tenancy began, and therefore he could not have a memory of such a payment.
56. Regarding the landlord's records of payments, I also accept his claim that he was unable to locate a receipt of that payment. But does that mean that no deposit was paid? The landlord stated that he was also unable to locate any records of the tenant's rent payments for 2013, but there was no suggestion that that rent had not been paid. Rather, it was later revealed that the reason these records could not be located, according to the landlord, was that he only has records going back 7 years.
57. As the landlord's claim for compensation for damages has not succeeded, he shall refund the \$350.00 security deposit to the tenant.

Decision

58. The tenant's claim for refund of the security deposit succeeds in the amount of \$350.00.

Issue 8: Hearing Expenses

59. The tenant submitted a hearing expense claim form, and a receipt for \$20.00 for the costs of filing her application, and a receipt for \$14.88 for the costs of serving the landlord by registered mail. As the tenant's claim has been partly successful, the landlord shall pay these hearing expenses.

Summary of Decision

60. The tenant is entitled to a payment of \$409.88, determined as follows:

a) Refund of Security Deposit	\$350.00
b) Compensation for Inconvenience	\$25.00
c) Hearing Expenses	\$34.88
d) Total Owing to Tenant.....	<u>\$409.88</u>

23 February 2023

Date

John R. Cook
Residential Tenancies Tribunal

