

Residential Tenancies Tribunal

Applications: 2022 No. 1099 NL

Decision 22-1099-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 2:00PM on 24 January 2023 via teleconference.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as "landlord1" and "landlord2", participated in the hearing.
3. The respondent, [REDACTED], hereinafter referred to as "tenant1", participated in the hearing. His wife, [REDACTED], hereinafter referred to as "tenant2" did not participate but was represented by tenant1.
4. An affidavit of service was provided by the landlords confirming that the tenants were individually served by email of the claim on 09 January 2022 (L#1). Proof of service was also provided. The tenant denied receipt of service and suggested that the document may have ended up in his Junk mail.
5. The details of the claim were presented as fixed term agreement, expected to run between 01 November 2022 and 30 April 2023 with a copy of the written agreement provided (L#2). Monthly rent was set at \$2,800.00 and a security deposit in the amount of \$2,100.00 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 landlord is seeking the following:
 - Validity of Termination Notice determined;
 - An order for payment of rent in the amount of \$2,811.00.

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 section 14 and 18 of the *Act*.

Preliminary Matters

10. The landlords amended their claim for compensation for rent and increased it to \$5,611.00 as rent has since come due and not been paid for December 2022 (\$2,800.00) or January 2023 (\$2,800.00). Because the landlords did not indicate on their application form that they are seeking Late Fees, their claim for \$11.00 in late fees was removed resulting in a claim of \$5600.00 for rent. Lastly, since the landlords are holding a security deposit in the amount of \$2,100.00, this claim will also consider what happens to the deposit.
11. I gave leave to tenant1 to submit email correspondence with the property manager. I also gave leave to the property manager, [REDACTED], who appeared as a witness, to provide copies of relevant email communication.

Issue 1: Validity of Termination Notice

Landlords' Position

12. Landlord1 testified that they did not receive notice of termination in accordance with the *Act* and that they were just informed on 02 December 2022 the tenants would not be moving into the rental premises.
13. The landlords' property manager, [REDACTED], was called as a witness. She testified that she reached out to the tenants because rent for December 2022 had not been received. She testified that she was then informed by tenant1 that he would not be occupying the rental premises because of an issue his wife and daughter encountered with a belligerent neighbour of the rental premises when they tried to move into the rental premises. The property manager testified that she then took back the tenants' keys because he was concerned about the safety of his wife since he travels a lot for work. She testified that she communicated to tenant1 that he was still liable for any and all costs related to the fixed term rental agreement that he had signed. Copies of related emails from the property manager were received later that day (L#0).

14. The property manager testified further, that she then made contact with landlord2 who looked into the situation and confirmed that the belligerent neighbour was no longer a neighbour of the rental premises. With this information in hand, the property manager testified that she reached out again to tenant1 to encourage him to take occupancy of the rental premises. Copies of related emails were received from the property manager later that day (L#0).

Tenants' Position

15. Tenant1 testified that his wife and daughter attempted to take occupancy of the rental premises in early December but were unable to do so. He stated that access to the premises was blocked with vehicles on either side of the road, and that an interaction with a neighbour turned aggressive after they asked if some vehicles could be moved. Following this experience, the tenant testified that he reached out to the property manager to seek resolution. However, tenant1 testified that he was asked to return his keys and so he did. Tenant1 was given permission to submit proof of this email exchange after the hearing concluded. He provided an email dated 05 December 2022 from the property manager informing him that he could take back keys as landlord2 had determined the belligerent neighbour was no longer an issue (T#1).

Analysis

16. Validity of termination notice determined was applied for and considered in this dispute because it is relevant to the landlords' claim for rent. I considered the testimony from the landlords, their property manager and tenant1. I also reviewed the emails provided by the property manager and tenant1. In doing so, I concluded that the tenancy ended on 02 December 2022, the day as shown on the property managers' email, that tenant1 returned the keys to the property manager. As shown in the property manager's email, she wrote on 02 December 2022 (see page 1 in L#0):

"I am just wondering after our conversation where are the keys to the property? Kindly let me know or drop the keys off at our office [REDACTED]".

17. To which, tenant1 responded minutes later by writing:

"No problem I'll drop it off".

18. Consequently, I find that the property manager terminated the rental agreement when she took back the keys on 02 December 2022.

Decision

19. The rental agreement was terminated on 02 December 2022.

Payment of Rent \$5,600.00

Landlord's Position

20. Landlord1 testified that they are seeking payment of rent for December 2022 and January 2023 because they signed a fixed term agreement with the tenants. A copy of a rent ledger dated 05 December 2022 showing a balance of \$2,811.00 for December 2022 rent and late fees was submitted (L#3). Landlord2 testified that he became aware on 02 December 2022 that the tenants would not be occupying the rental premises. The landlord's property manager testified that the rental premises was advertised for rent in mid December 2022 and that as of the date of the hearing, it currently remains vacant.

Tenants' Position

21. Tenant1 testified that he paid rent for November 2022 (\$2800.00) as well as a security deposit in the amount of \$2,100.00 despite never living the rental premises. After encountering issues while trying in early December 2022 to move in, tenant1 testified that he considered money spent to date (e.g., November 2022 rent and security deposit) as a "loss".

Analysis

22. The landlord in an application for payment of rent, is required to establish the rental rate and payment record of the involved tenant(s). All parties involved in this dispute appeared to acknowledge that monthly rent was \$2,800.00 and that the tenants signed a fixed term rental agreement set to expire 30 April 2023. Where I found that the rental agreement itself terminated on 02 December 2022 when the keys were returned, I find that the tenants remain liable for rent because they signed a fixed term rental agreement with the landlords. This is because, as shown in 18(1)(c) of the *Act*, a tenant is required to give notice of termination "*not less than two months notice before the end of the term where the residential premises is rented for a fixed term*".
23. Specific to this dispute, I accept that the landlords are seeking payment of rent in the amount of \$5,600.00 representing monthly rent that came due for December 2022 (\$2,800.00) and January 2023 (\$2,800.00). Because the property manager and the landlords consistently testified that they attempted to mitigate losses with respect to the rental premises, by both advertising the premises and also attempting to resolve the tenants' concerns with the neighbour of the rental premises, I find that the landlords' claim for payment of rent succeeds in the amount presented.

Decision

24. The landlord's claim for payment of rent succeeds in the amount of \$5,600.00.

Issue 3: Security Deposit \$2,100.00

Relevant Submissions

25. The rental agreement (L#2) and rent ledger (L#3) provides evidence of a \$2100.00 security deposit. The landlords have requested to retain the full value of this security deposit against monies owed.

Analysis

26. 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.

27. As the amount owing to the landlord for rent is in excess of the security deposit collected, I find that the landlord is entitled to retain the full amount of the \$2,100.00 security deposit.

Decision

28. The landlords shall retain the full value of the \$2,100.00 security deposit.

Issue 4: Hearing Expenses


29. The property manager claimed the \$25.00 cost of securing a commissioner of oaths for the affidavits submitted. Because the landlords' claim has been successful, the tenants shall pay this expense.

Summary Decision

30. The rental agreement was terminated on 02 December 2022.
31. The landlords shall retain the full value of the \$2,100.00 security deposit.
32. The tenants shall pay to the landlords the amount of \$3,525.00 , determined as follows:
- a) Rent.....\$5,600.00
 - b) Hearing Expenses.....\$25.00
 - c) LESS Security Deposit.....\$2,100.00
 - d) Total.....\$3,525.00

07 February 2023

Date


Jaclyn Casler
Residential Tenancies Tribunal