

## Residential Tenancies Tribunal

Application: 2022 No. 0446 NL

Decision 22-0446-00

Jaclyn Casler  
Adjudicator

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### Introduction

1. The hearing was called at 9:15AM on 25 July 2022 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”, participated in the hearing.
4. An affidavit of service was provided by the tenant confirming that the landlord was served of the claim (T#1) against her. Proof of electronic service was also provided by the lawyer retained by the tenant for the purposes of service.
5. The details of the claim were presented as a tenancy that was to start 01 August 2021 and run for a fixed term of 12 months. Rent was to be \$700.00 a month and a security deposit in the amount of \$525.00 was paid. A copy of the written rental agreement was provided (T#2).
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:
  - An order for refund of rent in the amount of \$1,400.00;

- An order for compensation paid for inconvenience in the amount of \$285.30;
- An order for a refund of the security deposit in the amount of \$525.00.
- An order for payment of other in the amount of \$120.00.

## **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 10 and 14 of the *Act* and
  - Residential Tenancies Policy 9-005 Depreciation and Life Expectancy of Property
  - Residential Tenancies Policy 13-002 Rental Rebate

## **Preliminary Matters**

10. The landlord was not present or represented at the hearing and I was unable to reach her by telephone despite attempting to make contact on multiple numbers. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*.
11. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, where the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as they have been properly served.
12. As the landlord was properly served, and any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.

## **Issue 1: Refund of rent Relevant Submissions**

13. The tenant was to reside in the basement unit of the rental premises located at [REDACTED] from 01 August 2021 onwards. The tenant testified that when he attended the rental unit in middle of July 2021 with his girlfriend for a viewing, they were informed by the landlord that a basement bathroom would be constructed and operational before 01 August 2021.
14. The tenant is requesting the return of all rent monies paid because he testified that his rental unit was not available to be occupied during August 2021 and then, during September 2021, his landlord made his living situation unbearable.

In particular, the tenant testified that the landlord was constantly invading his privacy and bringing individuals into his rental unit. These interferences negatively impacted his studies, causing him to fail and repeat his final term of his undergraduate degree in mathematics and computer science.

15. The tenant testified that he arrived at the rental premises on 01 August 2021 as intended but found that he could not occupy the rental unit because construction was ongoing across the unit, not just related to the bathroom. He testified that he was instructed to leave his belongings in the laundry room and sleep in the living room. He testified that the living room had no door and that he had to string a curtain along the hallway for privacy.
16. Consequently, the tenant testified that he left his belongings in storage at the rental premises and moved in with his girlfriend for the month of August 2021. The tenant provided a written journal record of his interactions with the landlord between 08 August 2021 and 27 September 2021 (T#3A). In particular, he notes the various requests made of him during the month of August, which he obliged despite not being paid to provide these services, and paying rent for a unit that he could not occupy. The tenant provided multiple examples of text exchanges where the landlord makes such requests (T#3B).
17. The tenant testified that the police were called on him on 28 August 2021 after he refused to pick up groceries for the landlord. Evidence of this police interaction was collected and referenced by the tenant's lawyer.
18. The tenant also provided a letter written by his lawyer addressed to his landlord (T#4). This letter was dated 02 September 2021 in response to a termination notice that the tenant had received on 31 August 2021 (T#5). This notice was issued under section 24 of the *Act, inference with privacy and reasonable enjoyment* and identified a stated move out date of 6 September 2021.
19. The tenant testified that he submitted an application to this tribunal for Validity of Termination Notice (2021-0409-NL). This hearing was dismissed on 18 October 2021 because the tenant vacated the rental premises on 01 October 2021. Of note is that the lawyers referred to this termination notice as "*strictly vindictive and discriminatory in nature*" (see page 2 in T#4). They also wrote that "[the tenant] is not a professional cleaner, nor is he a made, nor is he someone that you can get free labour from....[the tenant] is a student tenant, not a free labourer or an errand boy" (see page 3 in T#4).
20. The tenant testified that the landlord's actions "*affected [him] so horribly*". He submitted multiple examples of texts conversations between himself and his landlord to highlight her behaviour that made his residing in the rental premises in September 2021 unbearable including:
  - Text messages informing him that he cannot have guests. These were received on 30 August 2021 after he was finally able to take occupancy in the rental unit (T#6).

- Text messages informing the tenant that she will be placing his belongings outside of the rental unit as of 06 September 2021, the effective date of her section 24 notice of termination (T#7). These references also mention multiple viewings of the tenant's unit, often times on short notice. The tenant testified that on one day, the landlord brought 12 people to view the rental unit and interrupted his online classes.
  - He was informed by the landlord on 01 September 2021 that he could not park on the driveway due to repairs, and was unable to park there for the majority of the month.
21. Additionally, the tenant testified that he did not have functioning heat in his rental unit for the month of September. He wrote in his journal submitted that the electrician attended the rental unit on 04 September 2021 but did not connect the thermostat (T#3). This was also supported by text (T#8). A picture of the rental unit with an empty fuse box on the wall where the thermostat should be, was provided (T#9).
22. The tenant called his girlfriend, [REDACTED] as a witness. She testified that she attended the rental premises with the tenant in middle of July 2021 and that she then provided housing for the tenant in August 2021 when his rental unit was not available due to construction. The witness testified that the tenant is the "*kindest person she's ever met*" and that he is very respectful. She testified that he regularly attended the rental premises in August 2021 to do various tasks of the landlord despite not being able to live there. The witness also testified in support of the evidence provided by the tenant above regarding the landlord's persistent interference with his attempts to live quietly in the basement.

## Analysis

23. According to ***Residential Tenancies Policy 13-002 Rental Rebate***, when a service is discontinued, or where an accommodation becomes unavailable, the value of the service or accommodation may be considered a rental increase. The value of this, may be determined by the Residential Tenancies division.
24. The tenant in this dispute, is seeking refund of rent for the months of August and September 2021, the two months that he paid rent to the landlord. The tenant successfully established that he was not able to reside at the rental unit in August 2021 despite the rental agreement that identified a start date of 01 August 2021. The tenant also successfully established that his tenancy for the month of September 2021 was significantly, negatively impacted by the "*vindictive and retaliatory*" actions of the landlord.
25. In conclusion, the tenant who had been anticipating residing in the rental unit for a fixed term of 12 months, paid rent for two months but was not able to reside peacefully in the unit for a single day. As such, I find that he is entitled to the full repayment of rent in the amount claimed of \$1,400.00.

## **Decision**

26. The tenant's claim for refund of rent succeeds in the amount of \$1,400.00.

### **Issue # 2: Compensation for Inconvenience (\$285.30)**

#### **Relevant Submissions**

27. The tenant testified that he was seeking compensation for the costs of inconvenience for UHAUL moving charges incurred on 03 August 2021 (\$182.46) and 01 October 2021 (\$102.84) Proof of cumulative charges on his personal VISA were provided for both August (T#11) and October (T#12).
28. The tenant testified that he is entitled to compensation for these moving costs since he incurred them while moving his personal possession into and then out of the rental unit.

#### **Analysis**

29. The tenant provided proof of charges for UHAUL. These are charges that he would not have incurred if he was not moving into the landlord's rental unit where he was unable to reside as intended. As such, his claim succeeds in the amount claimed of \$285.30.

## **Decision**

30. The tenant's claim for compensation for inconvenience succeeds in the amount of \$285.30.

### **Issue #3: Other (\$120.00)**

#### **Relevant Submissions**

31. The tenant testified that he spent 10 hours painting the newly constructed bathroom in the rental unit. He provided evidence of his text exchange with the landlord where she initially offered to pay him \$200.00 for this work. The tenant submitted proof of a text exchange with the landlord where she said she would pay him \$200.00 for the work (L#13).

#### **Analysis**

32. According to *Residential Tenancies Policy 9-005 Depreciation and Life Expectancy of Property*, time spent painting can be claimed in an hourly amount of \$23.20. Where the tenant provided evidence that the landlord initially agreed to pay him and the reneged on her commitment, I find that that the tenant is

entitled to payment in the amount of \$232.00, representing the 10 hours of time spent painting (e.g., \$23.20 x 10). As however, the tenant applied for \$120.00 in compensation for **Other**, I find that his claim shall succeed in that amount.

## Decision

33. The tenant's claim for compensation for **Other** succeeds in the amount of \$120.00.

## Issue # 4: Security Deposit (\$525.00)

### Relevant Submissions

34. Evidence of a \$525.00 security deposit having been collected on 14 July 2021 was provided in the rental agreement (T#2).

## Analysis

35. 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.*

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*(12) A landlord who does not make an application in accordance with subsection (11) shall return the security deposit to the tenant.*

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*(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.*

36. Where the landlord has made no counterclaim for retaining the security deposit, it shall be returned in its entirety to the tenant.

## Decision

37. The tenant's claim for return of the security deposit succeeds in the full amount of \$525.00.

## **Issue # 5: Hearing Expenses**

### **Relevant Submissions**

38. The tenant claimed the \$20.00 costs of applying for dispute resolution. He also testified that he would like compensation for the costs of his lawyer if possible. He submitted a copy of his lawyer's invoice for services rendered in September 2021 and May 2022 (T#14). According to this invoice, the tenant incurred charges of \$448.50.

### **Analysis**

39. According to *Residential Tenancies Policy: 12-001 Recovery of fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*, the only fee that is typically awarded is the hearing fee. Other allowable expenses include basic administrative costs related to service, such as expenses for registered mail and or the costs of hiring a process server.
40. Fees related to legal services are not contemplated by the policy.

### **Decision**

41. The landlord's claim for hearing expenses succeeds in the amount of \$20.00.

### **Summary of Decision**


42. The tenant is entitled to the following:

- The tenant is entitled to payment in amount of \$525.00 for return of the security deposit.
- That the landlord shall pay to the tenant payment of \$2,350.30, determined as follows:

a) Refund of Rent.....	\$1,400.00
b) Compensation Inconvenience .....	\$285.30
c) Other.....	\$120.00
d) Hearing Expenses.....	\$20.00
e) Return of security deposit.....	\$525.00
f) Total.....	<u>\$2,350.30</u>

27 July 2022

Date

  
Jaclyn Casler  
Residential Tenancies Tribunal