

Residential Tenancies Tribunal

Application 2023-0022-NL
2023-0077-NL

Decision 23-0022-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:12 a.m. on 09-February-2023.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondent and counter-applicant, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.

Preliminary Matters

4. The landlord submitted an email (LL#01) showing that he served the tenant with notification of today’s hearing on 23-January-2023, the tenant said she received this notification on 27-January-2023. The tenant said that she served the landlord with notification of today’s hearing by email on 20-January-2023; the landlord confirmed notification, however he pointed out that the forms he was provided were incomplete. Nonetheless, he accepts service and wished to proceed with the hearing.
5. The landlord amended his application to increase rent from \$10,300.00 to \$11,800.00 to reflect the current amount of rent due.

Issues before the Tribunal

6. The landlord is seeking:
 - Rent \$11,800.00
 - Damages \$650.00
 - Security deposit applied against monies owed \$400.00
 - Vacant possession of rental premises

The tenant is seeking:

- Validity of termination notice

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
8. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 10: Statutory conditions, Section 14: Security deposit, Section 17: Record of tenant's payments, and Section 19: Notice where failure to pay rent.

Issue 1: Rent \$11,800.00

Landlord's Position

9. The landlord submitted a rental agreement (LL#02) with the application. He entered a written term agreement with the tenant from 01-January-2022 until 31-December-2022. They are currently in a monthly agreement. The tenant initially paid \$1,700.00 a month, however in March the landlord removed the hot tub and he subsequently reduced the rent to \$1,500.00 to reflect that change. The rental period is from the 1st day of the month until the last day; rent is due the 1st day of each month. The landlord said that the tenant was supposed to pay a security deposit of \$850.00, however she only paid \$400.00 on 24-December-2021 and he is still in possession of the deposit.
10. The landlord stated that the tenant was in rent arrears for her full tenancy, he said that she initially carried a balance of \$100.00 but in the summer she fell further behind.
11. The landlord acknowledges that the tenant told him she was unwell and that he said it was okay that she couldn't make payments. He said what he meant was it was okay that she could be late, not that she could live there for free.
12. The landlord submitted kijiji ads (LL#04 & LL#05) he is concerned that she is renting a room in her rental and indicating that she owns the property. He does acknowledge he was okay with her having a roommate to assist with the cost of the rent.
13. He said he audited his bank deposits and submitted a rent ledger (LL#03) reflecting exactly what was paid. He said that that last payment received was on 12-October-2022. See below:

Rent ledger
2023-0022-NL & 2023-0077-NL

Date	Action	Amount	total
1-Jan-22	Rent due	1700.00	1700.00
10-Jan-22	payment	-850.00	850.00
24-Jan-22	payment	-750.00	100.00
1-Feb-22	Rent due	1700.00	1800.00
24-Feb-22	payment	-850.00	950.00

1-Mar-22	Rent due	1500.00	2450.00
4-Mar-22	payment	-850.00	1600.00
28-Mar-22	payment	-1500.00	100.00
1-Apr-22	Rent due	1500.00	1600.00
14-Apr-22	payment	-1500.00	100.00
1-May-22	Rent due	1500.00	1600.00
24-May-22	payment	-1500.00	100.00
1-Jun-22	Rent due	1500.00	1600.00
1-Jul-22	Rent due	1500.00	3100.00
1-Aug-22	Rent due	1500.00	4600.00
1-Sep-22	Rent due	1500.00	6100.00
4-Sep-22	payment	-1000.00	5100.00
1-Oct-22	Rent due	1500.00	6600.00
5-Oct-22	payment	-400.00	6200.00
12-Oct-22	payment	-400.00	5800.00
1-Nov-22	Rent due	1500.00	7300.00
1-Dec-22	Rent due	1500.00	8800.00
1-Jan-23	Rent due	1500.00	10300.00
1-Feb-23	rent due daily rate Feb 01- 09	443.88	10743.88

Daily rate: $\$1500 \times 12 \text{ months} = \$18,000$

$\$18,000 \text{ divided by } 365 \text{ days} = \49.32

$\$49.32 \times 9 \text{ days} = \443.88

14. Note: ledger is amended to show a daily rate for February as this tribunal doesn't consider future rent.
15. The landlord is seeking full compensation for rent owed.

Tenant's Position

16. The tenant confirms the details of the rental agreement as stated by the landlord.
17. The tenant disputes the payments recorded in the ledger provided, she believes that she paid more than is shown. She was unable to provide any proof of payments, she said she never received receipts and that her online banking is frozen while the bank completes an investigation on her account.
18. The tenant stated that she has been diagnosed with cancer this past summer and that she explained to the landlord that she was unable to work and wouldn't be able to make the rent payments. She believed he was okay with this.
19. She confirms that she did advertise and now has a roommate. She said he moved in in November and that she pays his payments to the landlord for rent.

Analysis

20. In the matter of rent owed the onus is on the tenant to show proof of payment. The tenant's dispute of payment is noted, however, she was unable to provide this tribunal with any evidence of payment. The tenant stated that she didn't have receipts or access to her bank account to show payments made. She also stated that she uses the rent paid by her roommate to pay rent, however, since he moved in there are no payments made.
21. The landlord is required to maintain a rent ledger documenting the tenants rent payments. He is only required to provide receipts to the tenant upon their request, as per Section 17 of the *Residential Tenancies Act, 2018*, as follows:

Record of tenant's payments

- 17. (1) A landlord **shall maintain** a complete and up-to-date record of*

 - (a) rent and other money received from a tenant; and*
 - (b) the receipt and disbursement of a security deposit and interest under section 14.*
 - (2) A record required under subsection (1) shall identify the tenant and residential premises to which the money relates.*
 - (3) Upon **the request** of a tenant, a landlord **shall provide** a tenant with a **receipt** for rent or other money paid to the landlord in relation to the residential premises.*
 22. Non-payment of rent is a violation of the rental agreement (LL#02). The landlord has maintained his records in accordance with the *Act*. I accept the landlord's testimony and evidence that the tenant did not pay rent totaling \$10,743.88.
 23. The tenant shall pay the landlord the rent owed totaling \$10,743.88.

Decision

24. The landlord's claim for rent succeeds in the amount of \$10,743.88.

Issue 2: Damages \$650.00

Landlord's Position

25. The landlord submitted a compensation ledger (LL#06) as follows:

Damage	Cost
Graffiti vandalism to exterior of home	250.00
Broken Window	300.00

Doorbell	100.00
Total	650.00

26. The landlord removed the cost of the doorbell.
27. The landlord submitted a text message (LL#07) from the downstairs tenant, which includes a picture of the side of the house. The picture shows that someone has spray painted the side of the house with the words “thief” and “bitch.” The window in the picture is also broken. The downstairs tenant tells the landlord that this is targeted at the upstairs tenant. The text is dated for 01-December-2022.
28. The landlord said he received a verbal quote from a window repair place for the window and a car detail place for the cost of graffiti removal. This work has not been completed.
29. The landlord is seeking the cost of the repairs.

Tenant's Position

30. The tenant said that these two incidents happened on separate occasions. The damage to the window was 20-November-2022 and the graffiti was on 29-November-2022. Both times she has contacted the police and filed a report.
31. The tenant explained that the house is in a bad neighborhood and that there have been ongoing issues. She doesn't know if the damages are directed at her. She said that after the window was damaged she contacted the landlord and he agreed to fix the window.
32. The tenant said she contacted her tenant's insurance and they said that it wouldn't be covered under her insurance and that the homeowner's insurance should cover it.

Analysis

33. 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.

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:

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)

34. Both parties confirm that the damages took place while the tenant was in possession of the property. However, the landlord has failed to show that the tenant is responsible for the damages. The landlord has provided no evidence or testimony to show that the tenant or a person she permitted on the property did this damage (Section 10.2). The landlord did provide a text from the downstairs tenant stating that this is directed towards the upstairs tenant, this is not sworn testimony and bears very little weight. It is an assumption without evidentiary proof.

35. I find that the landlord has failed to prove that the damages to this property are the responsibility of the tenant. The landlord's claim fails.

Decision

36. The landlord's claim for damages fails.

Issue 3: Security deposit applied against monies owed \$400.00

Relevant Submissions

37. The landlord and tenant both confirm that the tenant paid a security deposit of \$400.00 as stated in paragraphs 9 and 16. The landlord is still in possession of the deposit. The landlord is requesting to retain the security deposit against monies owed.

Analysis

38. The landlord's claim for loss has been successful, paragraph 24, he shall retain the deposit as per Section 14 of the *Residential Tenancies Act, 2018*, see below:

Security deposit

14. (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

Decision

39. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$400.00.

Issue 4: Vacant Possession of the Rental Premises

Issue 5: Validity of Termination Notice

Landlord's Position

40. The landlord submitted a termination notice (LL#08). It is on a "landlord's notice to terminate early – cause" form for failure to pay rent. The notice is signed and dated for 09-January-2023, with a termination date of 20-January-2023.
41. The landlord said that he served the notice electronically by email on 08-January-2023 at 2:35 p.m. and he provided proof of the email (LL#09).
42. The landlord also said he had a person deliver in personally to her door.

Tenant's Position

43. The tenant stated that she was served the termination notice (TT#01) by someone the landlord referred to as the property manager on 23-January-2022.

Analysis

44. The notice was served under Section 19, of the *Residential Tenancies Act, 2018*, which states:

Notice where failure to pay rent

19. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),

.....

(b) where the residential premises is

- (i) rented from month to month,*
- (ii) rented for a fixed term, or*
- (iii) a site for a mobile home, and*

the amount of rent payable by a tenant is overdue for 5 days or more, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 10 days after the notice is served on the tenant.

.....

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

- (a) be signed by the landlord;*
- (b) state the date on which the rental agreement terminates and the tenant is required to vacate the residential premises; and*
- (c) be served in accordance with section 35.*

.....

45. The tenant was in rent arrears in excess of the 5 days when the notice was served. On the date of termination, the tenant was still in arrears. The landlord provided proof that he served the notice in accordance of the Act. The tenant must have been confused about the date of her service being 23-January-2023, as according to her testimony in paragraph 4, she served the landlord with notice of their hearing on 20-January-2023 and he served her with notification of the hearing on 23-January-2023. Her application is for validity of termination notice; this is a clear indication that she must have had notice of the termination before the 23rd. The submitted documentation of the email sent by the landlord clearly shows it was sent on 08-January-2023.
46. The termination notice meets the requirements of the Act and is a valid notice.
47. The tenant should have vacated the property by 20-January-2023.

Decision

48. The landlord's claim for an order for vacant possession succeeds.
49. The tenant shall vacate the premises immediately.
50. The tenant shall pay to the landlords any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.
51. The tenant shall pay a daily rate for rent beginning 10-February-2023 of \$49.32, as per paragraph 13, until such time as the landlords regain possession of the property.

Summary of Decision

52. The tenant shall:
 - Pay the landlord \$10,343.88 as follows:
 - Rent \$10,743.88
 - Security deposit applied (400.00)
 - Total \$10,343.88

- Pay a daily rate of rent beginning 10-February-2023 of \$49.32, until such time as the landlords regain possession of the property.
- Vacate the property immediately
- Pay to the landlords any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

The landlord

- Will be awarded an Order of Possession.
- Shall retain the security deposit of \$400.00

February 21, 2023

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office