

Residential Tenancies Tribunal

Applications: 2023 No. 0026 NL

Decision 23-0026-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 2:01 PM on 13 February 2023 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing. The respondent, [REDACTED], hereinafter referred to as "the tenant", did not participate in the hearing and was not represented.
3. An affidavit of service was provided by the landlord (L#1) confirming that the tenant was served by email on 26 January 2023 and proof of service to [REDACTED] was provided (L#2). The landlord also provided proof of previous tenancy related correspondence between herself and the tenant using that same email address (L#3). Consequently, I accept that the tenant was served notice of the claim against her in accordance with 42(3) of the *Residential Tenancies Act, 2018*.
4. The details of the claim were presented as a month-to-month rental agreement that started on 15 July 2022 and ended on 28 September 2022. Monthly rent was set at \$650.00 and a security deposit in the amount of \$400.00 was collected. A formal written rental agreement was not created, but the landlord provided proof of text messages between herself and the tenant regarding the tenancy (L#4).
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. 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

6. The landlord is seeking the following:
 - an order for payment for rent in the amount of \$650.00;
 - an order for payment of late fees in the amount of \$75.00;
 - an order for payment of utilities in the amount of \$67.00;
 - an order for payment of other in the amount of \$236.39; and
 - An order to retain the security deposit in the amount of \$400.00.

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* (the *Act*).
8. Also relevant and considered in this case are sections 10, 14, 15, 19, 22, and 24 of the *Act* and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

9. The tenant was not present or represented at the hearing and I was unable to reach her by telephone at the provided number of [REDACTED]. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*.
10. 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 she has been properly served.
11. As the tenant 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: Validity of Termination Notice Determined

Relevant Submissions

12. The rental premises is located at [REDACTED], The tenant resided in the basement bedroom with her own bathroom, but otherwise shared amenities with the landlord. The landlord testified that she recently purchased the house and that she was eager to reside with the tenant who she knew from work.
13. The landlord submitted a copy of a termination notice issued on 13 September 2022 with a stated move out date of 20 September 2022 (L#5). The landlord testified that this notice was served to the tenant by email on the day that it was issued. The landlord cited section 19 (non-payment of rent), 22 (failure to keep

premises clean), and 24 (interference with peaceful enjoyment and privacy) of the *Act* as her authority for issuing this notice.

14. The landlord testified that she issued the notice under section 24 of the *Act* because she watched her new home become covered in the tenant's belongings and debris. She testified that this experience was stressful and required her to increase her medication. The landlord testified further that the tenant allegedly allowed everything to "fester" and this made her particularly worried about the staining to the flooring that was occurring due to the tenant's cat. The landlord stated that this cat was permitted.
15. As evidence of her concerns, the landlord submitted photographic proof of the condition of the tenant's room and bathroom prior to her occupancy (L#7). The landlord contrasted these against photos taking during her tenancy, depicting the much deteriorated condition, as well as a series of photos from post occupancy (L#8).

Analysis

16. To issue a termination notice under section 24 of the *Act*, interference with peaceful enjoyment and reasonable privacy, a landlord must be able to establish, on the balance of probabilities, that there was cause for issuance of a short notice (e.g., not less than 5 days). This means that they must successfully establish how the tenant contravened statutory condition 7(a) (section 10(1) of the *Act*) and unreasonably interfered with the rights and reasonable privacy of a landlord or other tenants in the residential premises, a common area or the property of which they form a part.
17. According to Residential Tenancies Policy 07-005, interference with peaceful enjoyment and reasonable privacy, interference is defined as an ongoing unreasonable disturbance or activity, outside of normal everyday living, caused by the landlord or the tenant or someone permitted on the premises by the landlord or the tenant. This includes any unreasonable disturbance that interferes with right of the landlord to maintain and manage the rental property. The policy further identifies that unreasonable disturbances interfering with peaceful enjoyment and reasonable privacy may include, but is not limited to the following: (i) excessive noise; (ii) aggressive or obnoxious behaviour; or (iii) threats and harassment.
18. According to the landlord's testimony, she had been excited to share her home with a one time friend. However, the landlord had to issue a termination notice shortly after the tenant took occupancy for interference with peaceful enjoyment reasonable privacy. Based on my review of the photos submitted, all of which indicate that the tenant made use of more areas than explicitly rented to her (e.g., storage room and stairwell) I accept that such actions caused the landlord duress. I further accept that the relative cleanliness and storage habits of the tenant could easily and rightfully interfere with the landlord's peaceful enjoyment and reasonable privacy of her home, the rental premises.

19. Consequently, I accept on the balance of probabilities that the tenant repeatedly contravened condition 7(a) peaceful enjoyment and reasonable privacy (section 10(1) of the *Act*). This means that I find that the termination notice issued to the tenant on 13 September 2022 was a valid termination notice.

Decision

20. The termination notice issued on 13 September 2022 was a valid notice.

Issue 2: Payment of Rent (\$650.00)

Relevant Submissions

21. The landlord submitted a rental ledger and testified that, as shown in the ledger, she is owed \$650.00 in rent (L#6).

Analysis

22. The landlord as the applicant is responsible for establishing the rate of rent and payment history. From reviewing the rental ledger provided, I accept that monthly rent was set at \$650.00. I also accept that the tenant paid \$350.00 in July 2022, \$650.00 in August 2022, and then made no payment in September 2022. Because the landlord was seeking vacant possession, I find that she is entitled to payment of rent until the day the tenant vacated only (e.g., 28 September 2022).

23. Regarding rent paid in July 2022, I find it odd that the tenant paid \$350.00 for "half months rent" since she took occupancy on 15 July 2022. This is because $\frac{1}{2}$ of \$650.00 is \$325.00. Consequently, as shown in the calculations and table below, I find that the landlord's claim for rent succeeds in the amount of \$573.36.

$$\begin{aligned} \$650.00 \times 12 &= \$7800.00 / 365 = \$21.37 \text{ per day} \\ \$21.37 \times 28 &= \$598.36 \text{ for rent owed for September 2022} \end{aligned}$$

	Effective Rent	Paid	Balance
July 22	\$325.00	350.00	+25.00
August 2022	\$650.00	\$650.00	-\$25.00
Sept 2022	<u>\$598.36</u>	<u>\$0.00</u>	<u>-\$573.36</u>
Total	1,573.36	\$1,000.00	

Decision

24. The landlord's claim for rent succeeds in the amount of \$573.36.

Issue 3: Payment of Late Fees (\$75.00)

Relevant Submissions

25. The landlord has assessed late fees in the amount of \$75.00 because she has not received rent for September 2022 even though the tenant resided in her premises until 28 September 2022.

Analysis

26. Section 15 of the Residential Tenancies Act, 2018 states:

Fee for failure to pay rent

15. (1) Where a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister.

27. The minister has prescribed the following:

Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed:

(a) \$5.00 for the first day the rent is in arrears, and

(b) \$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00.

28. I find that the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister as the period of time that rent has been late, exceeds the maximum possible calculation of \$75.00.

Decision

29. The landlord's claim for late fees succeed in the amount of \$75.00.

Issue 4: Payment of Utilities (\$67.00)

Relevant Submissions

30. The landlord testified that she agreed to split the electric bill with the tenant and submitted proof of bills dated 19 August 2022 and 20 September 2022 (L#9). The August bill shows an amount of \$55.55 and the September bill shows an amount

of \$78.49. The landlord testified that she is seeking payment in amount of \$67.00 (e.g., $\$55.55 + \$78.49 = \$134.04 / 2 = \67.02).

Analysis

31. I accept the landlord's testimony that the tenant agreed to share electric utility costs during her tenancy and I also accept the landlord's evidence that \$134.04 in electric costs were incurred at the rental premises between August and September 2022. Consequently, I find that the landlord successfully established on the balance of probabilities that she is entitled to compensation in the claimed amount of \$67.00.

Decision

32. The landlord's claim for compensation for utilities succeeds in the amount of \$67.00.

Issue 5: Payment of Other (\$236.39)

Relevant Submissions

33. The landlord testified that she is seeking compensation related to work that needs to be done in the areas previously occupied by the tenant so as to restore them to their original condition. The landlord referred to photos submitted (L#8) of assorted bulk items left behind by the tenant and testified that she will incur costs of \$25.00 from the City for removal. As evidence of this charge, the landlord submitted documentation from the city for their \$25.00 bulk garbage removal fee (L#10).
34. The landlord also referred to photos submitted (L#8) from after the tenant's occupancy as evidence for her need to hire professional cleaning. As evidence of the costs for cleaning, the landlord submitted a quote in the amount of \$191.39 for five hours of cleaning and rental of a carpet cleaner. The landlord testified that she originally thought that she would have to remove the impacted carpet, but has been told that it can be cleaned. The landlord stated that she has yet to complete any work in the areas previously occupied by the tenant, because she wanted to first complete the hearing and receive the adjudicator's decision.

Analysis

35. The applicant in any damage claim is required to provide and speak to the evidence (witness, documentary, or recorded) necessary to establish on the balance of probabilities that:
 - That the damage they are claiming compensation, exists;
 - That the respondent is responsible for the reported damage through a willful or negligent act; and

- The value to repair or replace the damaged item(s).

36. If and when damaged items pass the validity test of damages based on the balance of probabilities, actual compensation amounts are calculated in accordance with *Residential Tenancies Policy 9-005 Depreciation and Life Expectancy of Property*. According to this policy, higher compensation is awarded for damage of newer items, less compensation is awarded for items considered to have exceeded their serviceable life.

37. Based on my review of the before move in, during occupancy, and post occupancy photos provided by the landlord, I accept that the actions of the tenant have resulted in anticipated costs for bulk garbage removal and cleaning. Because the landlord has provided verifiable documentation related to both the damage and proposed costs, I find that her claim succeeds in the full amount of \$216.39 (e.g., \$191.39 + 25 = \$216.39).

Decision

38. The landlord's claim for compensation for other succeeds in the amount of \$216.39.

Issue 6: Hearing Expenses

39. The landlord claimed the \$20.00 expense of applying for this hearing. As her claim has been successful, the tenant shall pay this expense.

Issue 7: Security Deposit \$400.00

Relevant Submissions

40. The landlord provided her bank statement showing proof of payment from the tenant on 15 July 2022 in the amount of \$750.00, which represents a \$400.00 security deposit along with the \$350.00 payment for rent (L#12). The landlord also referred to the text message chain between herself and the tenant as evidence for both sides agreeing to a security deposit of \$400.00 (L#4).

Analysis

41. 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.

42. As the amount owing to the landlord for rent, utilities and other is in excess of the security deposit collected, I find that the landlord is entitled to retain the full amount of the \$400.00 security deposit.

Decision

43. The landlord shall retain the full value of the \$400.00 security deposit.

Summary of Decision

44. The termination notice issued on 13 September 2022 was a valid notice.

45. The landlord is entitled to the following:

- To retain the full value of the \$400.00 security deposit.
- An order for payment from the tenant in the amount of \$551.75 determined as follows:

a) Rent.....	\$573.36
b) Late Fees.....	\$75.00
c) Utilities.....	\$67.00
d) Other.....	\$216.39
e) Hearing Expenses	\$20.00
f) LESS Security Deposit.....	
(\$400.00)	
g) Total.....	<u>\$551.75</u>

24 February 2023

Date

Jaclyn Casler
Residential Tenancies Tribunal