

Residential Tenancies Tribunal

Applications: 2023-0040-NL

Decision 23-0040-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:02 AM on 02 February 2023 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing, he was supported by his wife, [REDACTED]. The respondent, [REDACTED], hereinafter referred to as "the tenant" also participated in the hearing.
3. An affidavit of service was provided by the landlord (L#1) confirming that the tenant was served in person on 20 January 2023 with notice of the claim. The tenant confirmed receipt of service.
4. The details of the claim were presented currently as a month-to-month rental agreement that started as a fixed term agreement, with a second tenant ([REDACTED] " [REDACTED] ") in October 2021. A copy of this original written rental agreement was provided (L#2). As per this agreement, monthly rent was set at \$1,000.00 including utilities, due at the first of the month, and a security deposit in the amount of \$750.00 was collected.
5. 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

6. The landlord is seeking the following:
 - An order for payment of rent in the amount of \$725.00;
 - An order for vacant possession;
 - An order for compensation for damages in the amount of \$976.50; and
 - An order to retain the security deposit in the amount of \$750.00 against monies owed.

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 and 19 of the *Act*.

Preliminary Matters

9. The tenant indicated that he was not provided with the pictures related to the landlord's claim for compensation for damages. The landlord chose to remove his claim for damages from this application and testified that he will submit a new application for compensation at a later date.
10. The landlord amended his claim for compensation for rent upwards to \$1,225.00 as a result of full payment (e.g., \$1,000.00) not being received for the month of February 2023.
11. The rental premises is a basement suite located at [REDACTED] [REDACTED]. The rental premises was originally a three unit apartment building with two units on the main floor, one which was rented and other used by the landlord when he was in the city. Both parties agreed that the rental premises was inspected by the [REDACTED] in early October 2022 and that the landlord was informed at the time that the rental premises could only be a legal two unit apartment. Both parties also agreed that the landlord was informed at the time, the tenant should vacate the basement apartment due to work ordered by the [REDACTED]. I gave leave to the landlord to submit relevant documentation received from the [REDACTED]. The tenant consented to this and documentation was later received (L#0).
12. Both parties agreed that the tenant currently resides alone in the basement apartment despite originally renting the unit with [REDACTED]. Both parties also agreed that the tenant and [REDACTED] were served multiple termination notices under section 24 of the *Act* (Peaceful enjoyment) when they were both residing in the basement apartment. The landlord testified that the current rental agreement is month-to-month, with the tenant only. The tenant was surprised by this declaration of a month-to-month agreement, however, he agreed that he is the sole tenant of the basement apartment.

Issue 1: Payment of Rent (\$1225.00)

Landlord's Position

13. The landlord submitted a copy of his rental ledger showing a history of payments received at the rental premises against the monthly rental charge of \$1,000.00 (L#3). The landlord confirmed that he previously put in writing for the tenant that his monthly rent was \$500.00 and a security deposit was paid in the amount of \$375.00. The landlord testified that this was done so that the tenant could get funding from social services for his share of the rent. The landlord testified that the other 50% of the rent was previously paid by, or on the behalf of [REDACTED]. He also repeatedly testified that he has banned [REDACTED] from the basement apartment and that the tenant is not permitted to have [REDACTED] in attendance.
14. The landlord acknowledged that the tenant was temporarily residing in the living room of the basement unit due to repairs ordered by the [REDACTED], and testified that one of the two basement bedrooms has now been repaired. The landlord testified that the tenant has done various work for him in the rental premises, and that having him reside in the basement apartment helps ensure the pumps run and flooding is avoided. The landlord reiterated that the tenant's rate of rent was never changed and that it has remained \$1,000.00 a month.

Tenant's Position

15. The tenant simultaneously denied and accepted the landlord's claim for rent. He agreed that he currently owes the amount claimed by the landlord based on a monthly rental rate of \$1,000.00. However, he also argued that monthly rent was only \$500.00 and testified that he did not owe money as a result of inconvenience experienced. The tenant denied that the landlord did him any favours by allowing him to reside in the basement rental premises. He also testified that the landlord had no rental monies coming in from the main floor after the [REDACTED] inspected, and so it was financially to the landlord's benefit that the tenant continue to reside in the basement. The tenant also testified that he was exposed to rodent feces when sleeping in the living room of the basement apartment while work was completed in the basement bedrooms.

Analysis

16. The landlord in an application for payment of rent, is required to establish the rental rate and payment record of the involved tenant(s). Specific to this dispute, the landlord maintained that the rental rate for the basement apartment is \$1,000.00 a month. The landlord also provided credible testimony to indicate that rent for this basement apartment was initially paid 50/50 by the tenant's rental subsidy and by [REDACTED]. Accordingly, the landlord testified that the tenant fell into arrears once [REDACTED] began residing elsewhere. I have noted that the tenant agreed that he owes the landlord rent based on the understanding that the monthly rental rate is \$1,000.00 a month.
17. Regarding evidence and testimony received from the landlord and tenant that the [REDACTED] ordered worked to be completed within the rental premises impacting the liveability of the basement apartment, I was satisfied that the landlord has

responded accordingly to these orders. Where the tenant testified that he believes he was inconvenienced by this experience, I note that the tenant has not submitted an application to this tribunal for compensation. Consequently, I find that the landlord established on the balance of probabilities that the monthly rate of rent for the basement apartment remains \$1,000.00 a month.

18. Regarding the landlord's exact entitlement to rent, I can only calculate to the date of the hearing. As shown in the rental ledger submitted, I accept that the tenant owed \$725.00 as at 31 January 2022, and I also accept that the tenant's \$500.00 rental subsidy for February 2023 has been received by the landlord. Accordingly, I calculate that the tenant owes \$290.76 as at the day of the 02 February 2023 hearing. This amount was arrived at through the following calculations:

- $\$1000.00 \times 12 = \$12,000.00 / 365 = \$32.88 \text{ per day}$
- $\$32.88 \times 2 = \$65.76 \text{ for January 1 - 2, 2023}$
- $\$725.00 - \$500.00 \text{ (February 2023 payment)} = \225.00
- $\$225.00 + \$65.76 = \$290.76 \text{ Arrears as at 02 February 2023}$

Decision

19. The landlord's claim for rent succeeds in the amount of \$290.76.

Issue 2: Vacant Possession of Rented Premises

Landlord's Position

20. The landlord submitted a copy of a termination notice issued on 10 January 2023 with a stated move out date of 22 January 2023 (L#4). The notice is a standard notice of termination under Section 19 of the *Residential Tenancies Act, 2018*. The landlord testified that the termination notice was served by in person, by knocking on the tenant's door and giving it to him on the day the notice was issued. According to the landlord's records, the tenant owed \$725.00 in rent on the day the termination notice was issued. The landlord is seeking an order for vacant possession of the rented premises because arrears remain on the account.
21. After it was raised by the tenant, the landlord acknowledged that he served the tenant with a section 20, Breach of Material Term Termination notice on 01 February 2023 to vacate by 28 February 2023. The landlord testified that this notice was served because the tenant allegedly continues to allow [REDACTED] to the rental premises.

Tenant's Position

22. The tenant acknowledged receiving the section 19 termination notice as issued by the landlord. He also testified that he received an additional termination notice from the landlord the day before the hearing and that this notice requires the tenant to move "not less than 1 month before the end of the rental period".

Analysis

23. Both parties agreed that a section 20 termination notice was issued to the tenant on 01 February and that the stated move out date on the previously issued section 19 termination notice, is 22 January 2023. According to Residential Tenancies Policy 07-01 Notice of Termination General Information:

"If a termination notice is already in place and a second notice is issued by either party whereby the termination date is earlier than that specified in the first notice, then so long as this second notice is valid, the tenant is required to vacate on the date specified in the termination notice".

24. Specific to this dispute, this means that the stated move out date of 22 January 2023 for the Section 19 termination notice that is the subject of this dispute, got replaced by the stated move out date of 28 February 2023 identified on the Section 20 termination notice issued to the tenant on 01 February 2023. Consequently, the landlord's application for an order of Vacant Possession based on the Section 19 Termination notice issued on 10 January 2023, can no longer be considered by this tribunal.

Decision

25. The landlord's claim for an order for vacant possession of the rented premises does not succeed.

Issue 3: Security Deposit \$750.00

Relevant Submissions

26. The rental agreement provides evidence of a \$750.00 security deposit (L#2). The landlord has requested to apply the value of the security deposit against monies owed by the tenant.

Analysis

27. 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.

28. I accept that the landlord applied to use the security deposit against monies believed to be owing by the tenant. In accordance with the spirit of 14(9) of the Act however, the value of a security deposit, can only be considered AFTER a tenant vacates. Because the landlord in this dispute was not successful with his application for vacant possession, I find that the security deposit can not be disposed of at this time since the tenancy continues.

Decision

29. The landlord is not entitled to any of the security deposit at this time.

Summary of Decision

30. The landlord's claim for rent succeeds in the amount of \$290.76.
31. The landlord's claim for an order for vacant possession of the rented premises does not succeed.
32. The landlord is not entitled to any of the security deposit at this time.

07 February 2023

Date

Jaclyn Casler
Residential Tenancies Tribunal