

Residential Tenancies Tribunal

Applications 2023 No. 0085 NL

Decision 23-0085-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 1:54PM on 22 February 2023 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing. The respondents, [REDACTED] and [REDACTED] hereinafter referred to as "tenant1" and "tenant2" also participated in the hearing.
3. An affidavit of service was provided by the landlord confirming that he served tenant1 by email on 27 January 2023 and proof of the email sent was provided (L#1). Tenant1 confirmed receipt of service and both tenants agreed to proceed with the hearing despite the landlord's failure to properly serve both tenants with notice of his claim.
4. The details of the claim were presented as an initially fixed term rental agreement that started 01 August 2022 and was meant to expire on 31 July 2023. A copy of this original agreement was provided (L#2). Monthly rent was set at \$795.00 a month, due on the first of the month, and a security deposit in the amount of \$596.25 was collected.
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. In these proceedings the standard of proof 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 Other in the amount of \$914.25; and
 - An order to retain the full \$596.25 security deposit.

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 14 of the *Act*.

Preliminary Matters

9. The rental premises is a two unit apartment building located at [REDACTED] [REDACTED]. The tenants resided in the basement apartment.
10. The tenants gave notice in October 2022 that they would be vacating early because they had to move for work. New tenants were secured for the rental premises from January 2023 onwards and the tenants paid monthly rent as required, despite not residing in the premises, for November 2022 and December 2022.

Issue 1: Payment of Other (\$914.25)

Landlord's Position

11. The landlord testified that he has used [REDACTED] [REDACTED] on an as needed basis to screen new tenants. He submitted a written summary of services received from [REDACTED] (L#3) and testified that he encountered unanticipated costs of \$914.24 to secure new tenants part way through the original tenants' fixed term rental agreement.

Tenants' Position

12. Tenant1 spoke on behalf of the tenants. She testified that she did her best to arrange for replacement tenants after providing notice they would be breaking the lease. Tenant1 referred to an email with [REDACTED] where she sought guidance on breaking the lease since she had arranged for new tenants (T#1). As shown in this email, tenant1 was redirected to her landlord. Tenant1 also referred to a subsequent email with the landlord and [REDACTED] where she again sought guidance for securing the replacement tenants that she had arranged (T#2). Tenant1 testified that representatives from [REDACTED] did not respond in a timely manner to any of her efforts to secure replacement tenants.

Analysis

13. The landlord's claim for payment of Other, can be considered a request for compensation for damage incurred (i.e., the costs incurred while securing new tenants). 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).

14. Specific to this dispute, this means that the landlord is required to establish on the balance of the probabilities that the actions of the tenants caused him to reasonably incur the claimed costs (e.g., \$914.25). Relevant to this dispute, is 10(1)(3) of the *Act* which reads as follows:

Assigning or Subletting Residential Premises

The tenant may assign or sublet the residential premises subject to the written consent of the landlord, and the landlord shall not arbitrarily or unreasonably withhold consent and shall not levy a charge in excess of expenses actually incurred by the landlord in relation to giving consent.

15. I consider this section of the *Act* to be relevant because even though neither party explicitly mentioned, “assigning or subletting” I accept that tenant1 made significant efforts to secure replacement tenants after providing notice they would be breaking their lease. Consequently, it was incumbent upon the landlord to respond in a timely manner to both a) the tenants’ notice of termination and b) the tenants’ efforts to mitigate the landlord’s potential loss. To that end, I reviewed the evidence referenced by the landlord and tenant1 and note the following timeline;

- [REDACTED] was informed on 24 October 2022 by the landlord that the tenants would be vacating on 01 November 2022.
- Tenant1 emailed Krown on 25 October 2022 seeking guidance on breaking a lease and securing new tenants. [REDACTED] directed the tenants to the landlord.
- Tenant1 emailed the landlord on 26 November 2022 and was informed that he had signed a new contract with [REDACTED] for securing new tenants.
- The tenants provided proof of paying rent for November 2022 (T#3) and December 2022 (T#4) in the full amount required, despite living elsewhere.
- The tenants submitted documentation from NL Power dated 28 December 2022 indicating that their account was closed (T#5), confirming that new tenants had been officially secured for the tenant premises.

16. Based on my review of this evidence and testimony, I find that the landlord failed to establish on the balance of probabilities that he made a timely decision to enter into a contract with [REDACTED] for the purposes of securing new tenants. Rather, it appears as though he only initiated this contract a month after he received notice of the tenants’ intention to vacate. Nonetheless, the tenants continued to pay rent as required until new tenants were secured.

17. Consequently, I find that the landlord is not entitled to additional compensation from the tenants (outside of rent already paid) because he violated his obligations under 10(1)(3) of the *Act* (as shown in paragraph 14) which requires him to respond reasonably to the tenants' request to break the lease. This means that I do not recognize the costs claimed by the landlord (e.g., \$914.25 management fee) as an eligible damage costs since they were not charged in a timely manner.

Decision

18. The landlord's claim for payment of Other does not succeed in any amount.

Security Deposit (\$596.25)

Relevant Submissions

19. The tenants have requested the full return of the security deposit and the landlord has applied to retain it against monies owed.

Analysis

20. 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.

21. Where the landlord's claim for compensation for payment of Other did not succeed in any amount, I find that the full value of the security deposit collected shall be returned to the tenants.

Decision

22. The landlord's claim against the security deposit does not succeed in any amount.
23. The landlord shall pay to the tenants \$596.25 to return the full value of the security deposit.

Summary of Decision

24. The landlord's claim for payment of Other does not succeed in any amount.
25. The landlord's claim against the security deposit does not succeed in any amount.
26. The landlord shall pay to the tenants \$596.25 to return the full value of the security deposit.

27 February 2023

Date

Jaclyn Casler
Residential Tenancies Tribunal