

Residential Tenancies Tribunal

Applications 2023 No. 0098 NL

Decision 23-0098-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 2:00 PM on 28 February 2023 via teleconference.
2. The applicant, [REDACTED], as represented by [REDACTED] and hereinafter referred to as "the landlord", participated in the hearing. He testified that the property owner of the rental premises located at [REDACTED] [REDACTED] is his client.
3. The respondents, [REDACTED] and [REDACTED] hereinafter referred to as "tenant1" and "tenant2" did not participate and were not represented at the hearing.
4. Two affidavits of service was provided by the landlord confirming that the tenants were served by email on 1 February 2023 (L#1). Proof of email sent to [REDACTED] and [REDACTED] was provided (L#2). The landlord also provided proof of electronic service to the tenants' individual phones (L#3) and testified that he knew to serve electronically because he used the contact information provided on the written lease agreement (L4).
5. The details of the claim were presented as an intended fixed term rental agreement that started 01 January 2023 and was set to run until 31 December 2023. The landlord confirmed that the tenants took possession of the rental premises early on 24 December 2022 and vacated on 08 January 2023. Monthly rent was set at \$2,800.00 and a security deposit in the amount of \$2,100.00 was collected.
6. 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

7. The landlord is seeking the following:
 - An order for payment of rent in the amount of \$2,800.00;
 - An order for payment of late fees in the amount of \$75.00;
 - An order for payment of compensation for inconvenience in the amount of \$1,400.00;
 - An order for payment of compensation for damages in the amount of \$250.00; and
 - An order to retain the security deposit in the amount of \$2,100.00 against monies owed.

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 are sections 10, 14, 18 and 19 of the *Act*.

Preliminary Matters

10. The tenants were not present or represented at the hearing. I was unable to leave a voicemail for tenant1 when I called him at [REDACTED]. I then reached tenant2 at [REDACTED] and during our brief interaction, she stated on record that "she had a lot to say" before cursing and hanging up. 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 has been properly served.
12. As the tenants were properly served, and any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence. Regarding however, the legal status of tenant2, it is noted that she is listed as an "Other Occupant" and not a "tenant" on the rental agreement. This means that she is not a legal party to the contract with the landlord and therefore not liable for the compensation or damages being sought. Consequently, her name will not be included on any orders produced by this tribunal.
13. The landlord withdrew his claim for compensation for damages because he was looking to claim more than the amount originally identified on his application. He stated that he would re-submit this claim.

Issue 1: Payment of Rent (\$2,800.00)Relevant Submission

14. The landlord submitted a property invoice for the rental premises that was addressed to tenant1 and tenant2 (see pages 10-12 In L#5). According to this document, the tenants paid \$840.00 for prorated rent in December 2022 and also paid the security deposit in the amount of \$2,100.00. However, no payment was received for January 2023 rent. Consequently, the landlord served tenant1 a section 19 termination notice on 07 January 2023 by taping it to the door (L#6). The notice was the standard template notice made available by this office and the stated move out date was 18 January 2023. The landlord testified that the tenants vacated the rental premises the following day, 08 January 2023.

Analysis

15. I accept that the landlord issued tenant1 a section 19 termination notice on 07 January 2023 because rent was not paid for January 2023. I further accept that \$840.00 in rent was paid for occupancy of the rental premises between 24 December 2022 and 31 December 2022. Where I note that the landlord is seeking compensation for rent for the full month of January 2023 in the amount of \$2,800.00, I find that he is entitled to compensation only to the day the tenants vacated. I also find that the landlord overcharged prorated rent for December 2022 and so I have made the following adjustment to his entitlement for rent as of 08 January 2023.

- $\$2,800.00 \times 12 = \$33,600.00/365 = \$92.05 \text{ per day}$
- $\$92.05 \times 8 = \$736.40 \text{ for December 24 - 31, 2022}$
- $\$840.00 \text{ (Dec 22 payment made)} - \$736.40 \text{ (payment owed)} = \$103.60 \text{ (rent credit as at 01 January 2023)}$
- $\$92.05 \times 8 = \$736.40 \text{ for January 1 - 8 2023}$
- $103.60 - \$736.40 = \$632.80 \text{ rent owed as at 08 January 2023}$

Decision

16. The landlord's claim for rent succeeds in the amount of \$632.80.

Issue 2: Payment of Late Fees (\$75.00)Landlord's Position

17. The landlord has assessed late fees in the amount of \$75.00 because he has not received rent for January 2023.

Analysis

18. 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.

19. 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.*

20. Because the landlord has been seeking payment of rent since at least 02 January 2023, I find that he is entitled to the maximum payment of late fees per rental period in the amount of \$75.00.

Decision

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

Issue 3: Compensation for Inconvenience (\$1,400.00)

Landlord's Position

21. The landlord referred to the client invoice submitted and identified a line item charge of \$1,400.00 *Advertising Leasing* (see page 11 in L#5). He testified that he pays his leasing agent \$1,400.00 to secure tenants for a rental premises. Specific to this dispute, the landlord testified that he is seeking to recoup these costs from the tenants since he was forced to incur a second leasing charge as a result of their vacating early. The landlord did not provide any other supporting (e.g., verifiable) information regarding this \$1,400.00 charge.

Analysis

22. I accept that the tenants vacated the premises during the first full month of a fixed term 12 month tenancy. However, I also accept that they vacated the day after they were served a section 19 termination notice from the landlord. This means that I find the landlord effectively waived his right to compensation for inconvenience because the tenants did what he requested of them. He issued a termination notice and they vacated.

Decision

23. The landlord's claim for compensation for inconvenience does not succeed in any amount.

Issue 4: Hearing Expenses

24. The landlord claimed the \$20.00 expense of applying for the hearing. As his claim has not succeeded in excess of the value of the security deposit collected (see Residential Tenancies Policy 12-01) I find that the landlord is responsible for this cost.

Issue 4: Security Deposit \$2,100.00

Relevant Submissions

25. The rental agreement provides evidence of a \$2,100.00 security deposit (L#4).

Analysis

26. 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.*

27. As previously stated in this report, I found that the landlord is entitled to the following payment from tenant1:

- Rent..... \$632.80
- Late Fees.....\$75.00
- **Total.....\$707.80**

28. Consequently, I find that the landlord is entitled to retain \$707.80 of the security deposit collected. The landlord is required to return the remaining \$1,392.20 (e.g., \$2,100.00 - \$707.80) to tenant1.

Decision

29. The landlord is entitled to \$707.80 of the security deposit.

30. The landlord shall pay to tenant1 the amount of \$1,392.20, representing the return of the remaining security deposit.

Summary of Decision

31. The landlord is entitled to retain \$707.80 of the security deposit as compensation from tenant1 for the following:

- a) Rent..... \$632.80
- b) Late Fees.....\$75.00
- c) Total.....\$707.80

32. The landlord shall pay to tenant1 the amount of \$1,392.20, representing the return of the remaining security deposit.

06 March 2023

Date

Jaclyn Casler
Residential Tenancies Tribunal