

Residential Tenancies Tribunal

Applications 2023 No. 0103 NL

Decision 23-0103-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:02 AM on 01 March 2023 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the tenant", participated in the hearing. As did the respondent, [REDACTED], hereinafter referred to as "the landlord". The landlord testified that he was representing the interests of wife and co-respondent [REDACTED], who did not attend.
3. Two affidavits of service was provided by the tenant confirming that he served both landlords electronically by phone on 14 February 2023 (T#1). The landlord confirmed receipt of service and testified that his wife has the tenant blocked on her phone and so service was not received.
4. The details of the claim were presented as a month-to-month rental agreement that started February 2022 for which a written rental agreement was provided (T#2). Monthly rent was set at \$550.00 and a security deposit in the amount of \$275.00 was collected. The tenancy ended on 20 July 2022 after the tenant called the RNC to the premises and they allegedly encouraged him to vacate.
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 tenant is seeking the following:
 - An order for refund or rent in the amount of \$550.00;
 - An order for possessions returned in the amount of \$1,343.09;
 - An order for compensation for inconvenience in the amount of \$1,180.66;
 - An order for compensation for damages in the amount of \$89.53;
 - An order for payment of Other in the amount of \$1,500.00; and
 - An order for return of the security deposit in the amount of \$275.00.

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 and 32 of the *Act*.

Preliminary Matters

9. The rental premises is a two unit building located at [REDACTED] [REDACTED]. The bottom floor unit was previously occupied by a family and the main floor unit consisted of three separately rented bedrooms. The tenant resided in one of these bedrooms. The landlord testified that he sold the rental premises in September 2022.
10. The tenant previously applied (e.g., Application # 2022-0610-NL) to this tribunal for validity of termination notice determined regarding a notice issued to him on 01 July 2022 with a stated move out date of 31 July 2022. Decision Report 2022-0610-NL (A#1) found this termination notice to be a valid notice.
11. The tenant's claim for payment of Other in the amount of \$1,500.00 was identified as a claim for compensation for "pain and suffering". Both parties were informed that this tribunal has no jurisdiction to determine entitlement for such claims under section 47 of the *Act*, Order of the Director. Consequently, this claim for compensation for Other was removed from the tenant's application.

Issue 1: Refund of Rent (\$550.00)

Tenant's Position

12. The tenant testified that he paid to stay in the premises until 31 July 2022 but was illegally evicted on 20 July 2022. He testified that he called the RNC to attend to the premises on 20 July 2022 because the landlords were in attendance at the premises with locksmith. The tenant is requesting the return of

rent paid for that month since he was not able to remain in the premises for the whole month.

Landlord's Position

13. The landlord agreed that the tenant paid rent in full for July 2022 and that the tenant vacated on 20 July 2022. The landlord testified that the police were only at the rental premises because the tenant called them.

Analysis

14. The landlord and tenant agreed that a termination notice was issued on 01 July 2022 requiring the tenant move out at the end of the month. The landlord and tenant also agreed that the tenant vacated on 20 July 2022. Where I found no evidence that the landlord applied to this tribunal for an order of possession, which if he were successful would have provided him with the legal means for removing a tenant, I accept that the tenant vacated sooner than required. Consequently, I also accept that the tenant is entitled to a refund of a portion of rent for July 2022. I specifically find that the landlord shall pay the tenant \$198.88 to reimburse him for the remaining 11 days of July 2022(e.g., 21 July 2022 to 31 July 2022) that he was unable to use or occupy the rental premises.

$\$550.00 \times 12 = \$6,600.00 / 365 = \$18.08$ a day for rent

$\$18.08 \times 11 = \198.88 for daily rate of rent between July 21 and 31 2022

Decision

15. The tenant's claim for return of rent succeeds in the amount of \$198.88.

Issue 2: Return of Possessions (\$1,343.09)

Tenant's Position

16. The tenant submitted a ledger outlining a claim for compensation for possessions (T#4). He testified that he is missing the items identified. The tenant also testified that he did not at any point contact the landlord looking for his possession, but that he instead went through the "legal process". The tenant acknowledged that he collected his possessions after the landlord contacted him and requested that he collect his remaining possession.

Landlord's Position

17. The landlord testified that the tenant never contacted him for his stuff despite living a few doors down. He also stated that the tenant's possessions were safely

kept within the rental premises behind the locked door until they were picked up by the tenant.

Analysis

18. The applicant in a claim for return of possessions is required to establish on the balance of probabilities that they are entitled to compensation and or return of property. Specific to this dispute, I find that the tenant failed to establish on the balance of probabilities that he was were entitled to any compensation. I specifically find that the tenant failed to provide evidence to suggest that the landlord contravened section 32 of the *Act* which deals with abandoned possessions. In contrast, I found the landlord's testimony credible when he stated that the tenant's possessions were safely kept (as required by the *Act*) behind a locked door until collected by the tenant.

Decision

19. The tenant's claim for possessions returned does not succeed in any amount.

Issue 3: Compensation Paid for Inconvenience (\$1,180.66)

Tenant's Position

20. The tenant referred to the written summary submitted of his claim for compensation (T#3). He testified that he should be entitled to compensation for having to secure a new rental agreement, for which he submitted a photo of a handwritten agreement (T#4). The tenant also stated that he is looking for compensation for subscriptions he was not able to enjoy after losing access to the rental premises. He also claimed the cost of food, and the purchase of a new TV and clothes. The tenant referred to his bank statement that includes reference to most of the charges claimed (T#5).

Landlord's Position

21. The landlord testified that he does not believe the tenant is entitled to compensation and stated that he will be filing his own claim for compensation against the tenant. The landlord testified that it was the RNC who encouraged the tenant to vacate.

Analysis

22. The landlord and tenant agreed that the tenant vacated on 20 July 2022, and that he did not take all his possessions with him at that time. Where of course, this tribunal provides a legal mechanism for determining compensation, we first require that applicants establish on the balance of probabilities that they are entitled to compensation as a result of the respondent contravening the *Act*. Specific to this dispute, it was previously noted in paragraph 16, that the tenant

did not contact the landlord for the purposes of securing his remaining possession. Rather, he waited until the landlord contacted him. Consequently, I find that any inconvenience suffered was not the result of the landlords.

Decision

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

Issue 4: Compensation for Damages (\$89.53)

Tenant's Position

24. The tenant submitted a written ledger outlining his claim for compensation for damages for two sweaters in the amount identified (L#6). He provided photos of the impacted sweaters which depict a series of dark marks on both, and testified that the sweaters were received as gifts. The tenant testified that the sweaters were damaged as a result of being thrown in a hamper and stained with body wash.

Landlord's Position

25. The landlord reiterated that the tenant's belongings were safely kept in a locked roomed until collected by the tenant. He denied damaging any of the tenant's possessions

Analysis

26. 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).
27. 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.
28. Regarding the tenant's claim for compensation for damages, I find that he failed to satisfy the test identified in paragraph 26 because he did not provide photos of the original state of the impacted photos. Additionally, he only provided a

screenshot of replacement cost for one of the two sweaters. In sum, I find that the tenant's claim for compensation for damages does not succeed as he failed to establish on the balance of probabilities that the landlord was responsible for damaging the two sweaters.

Decision

29. The tenant's claim for compensation for damages does not succeed in any amount.

Issue 5: Hearing Expenses

30. The tenant claimed the \$20.00 expense of applying for the hearing. Where his claim for compensation has been partially successful, I find that the landlords shall pay this expense.

Issue 6: Security Deposit \$275.00

Relevant Submissions

31. The rental agreement provides evidence of a \$275.00 security deposit (T#2). The tenant has requested that the full amount be returned and the landlord has requested to retain it. The landlord also acknowledged that he has not yet submitted an application to this tribunal.

Analysis

32. 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.

33. Because the landlord has not submitted a claim against the security deposit, I find that in accordance with 14(12) of the Act, the full value of this deposit shall be returned to the tenant.

Decision

34. The tenant is entitled to the full return of the \$275.00 security deposit.

Summary of Decision

35. The tenant is entitled to the full return of the \$275.00 security deposit.
36. The landlords shall pay to the tenant an amount of \$493.88, determined as follows:
 - a) Refund of Rent.....\$198.88
 - b) Hearing Expenses.....\$20.00
 - c) Return of Security Deposit.....\$275.00
 - d) Total.....\$493.88
37. The tenant's claim for compensation for inconvenience does not succeed in any amount.
38. The tenant's claim for compensation for damages does not succeed in any amount.
39. The tenant's claim for possessions returned does not succeed in any amount.

07 March 2023

Date

Jaclyn Casler
Residential Tenancies Tribunal