

Residential Tenancies Tribunal

Application 2023-0166-NL
2023-0273-NL

Decision 23-0166-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:03 a.m. on 30-March-2023.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as “tenant1 and tenant2” attended by teleconference.
3. The respondent, and counter-applicant, [REDACTED], represented by [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.

Preliminary Matters

4. The tenants provided an affidavit (TT#01) stating that they served the landlords with notification of the hearing on 17-March-2023; the landlord confirmed service. The landlord filed a counter application and served the tenants with notice electronically on 24-March-2023. The tenants did not receive adequate service, however they chose to waive service and continue with the hearing.

Issues before the Tribunal

5. The tenants are seeking:
 - Possessions returned \$1,400.00
 - Security deposit refunded \$740.00

The landlord is seeking:

- Payment for oil \$135.52
- Rent \$541.94
- Security deposit applied to monies owed.

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
7. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 10: Statutory conditions, Section 14: Security deposit, Section 21: Notice where premises uninhabitable, and Section 32: Abandonment of personal property.

Issue 1: Possessions returned \$1,400.00

Tenant's Position

8. The tenants provided their rental agreement (TT#02). The tenants entered a term agreement from 02-March-2021 until 01-March-2022, this agreement was with the previous homeowner. Another homeowner purchased the home and hired a rental management company; the landlord. Tenant1 said that they pay \$1,500.00 a month rent and this includes heat, light, cable and internet (as per part 10 of the written agreement). He said that their rental period is from the 2nd day of each month until the 1st day of the next. Their rent is due on the second day of the month. They paid a security deposit of \$740.00.
9. Tenant1 said that they moved out of the house on 01-May-2023. He explained that their cable was disconnected after the sale of the house went through on 01-March-2022 and it wasn't reconnected until 15-March-2022. He said that they ran out of oil twice and explained that the responsibility of the oil was that of the landlord and that when he complained that they were out of oil on 09-April-2022 he was told by the landlord that they couldn't have the tank filled for 4 or 5 days; he contacted Tapper's Oil and they said they could come right away. He contacted the landlord again and that day the tank was just partially filled and shortly after they were out of oil again.
10. Tenant1 claims he called the office of the landlord on 02-April-2023 and that he told the administrative person the lease is up and that they would be moving 01-May-2022.
11. After the move the tenant said that the landlord sent an email on 03-May-2022 with pictures detailing the outgoing inspection. Email provided (TT#04). He said in the pictures it showed that the corner kitchen cupboard was not packed up. He explained that they must have missed this and that he contacted the office requesting the return of those belongings. He provided a list of items (TT#03). He said that they left numerous messages and went by the office; they never got back to them.
12. Tenant1 explained that when filling out the application they may have added the two amounts requested together in error, he confirms that the items that are missing add up to \$675.00; this is the amount he is requesting. He did not provide receipts because they couldn't afford to replace with the same pots and pans; they went to Value Village and purchased second hand. He doesn't understand why a landlord would dispose of items from a cupboard that in his opinion was simply overlooked.

Landlord's Position

13. The landlord confirms the details of the rental agreement. She states that they did not receive a copy of the written agreement when they began management of this rental and that when she received the evidence was when she first saw the written agreement. She confirms that the homeowner would have received the tenants' security deposit when they took over ownership. She explains that their accounting was showing payment of the \$1,500.00 broken into 2 payments of \$300.00 for utilities and \$1,200.00 for rent.
14. The landlord acknowledges that there was a call saying that the tenants were out of oil on 09-April-2022, she said that they made arrangements for an immediate fill and that the tank was completely filled; the bill was in excess of \$1,800.00.
15. The landlord went on to say that there is no record of the tenants giving notice and that their process is to have the tenants send an email. Once this is done, they provide the tenants with forms to fill out. As none of this process happened, she disputes that they gave notice on the phone.
16. The landlord points out that the compensation sought for missing items is \$1,400.00 however the list of missing items adds up to \$675.00.
17. The landlord provided an email thread (LL#01) where tenant2 informs their office that they have moved and dropped off the keys. Tenant2 tells them in the email they have cleaned out the house and is requesting the security deposit back. The landlord said based on that communication they assumed what was left behind was abandoned and therefore garbage; they disposed of the items mid-May-2022.

Analysis

18. Section 32 of the Residential Tenancies Act, 2018, states:

Abandoned personal property

32. (1) Where a tenant abandons or vacates a residential premises and leaves personal property on the residential premises, the landlord shall either

(a) remove the personal property and immediately place it in safe storage; or

(b) store the personal property on the residential premises in a safe manner.

*(2) The personal property stored under subsection (1) shall be stored for **not less than 30 days** unless the tenant takes possession of the personal property before the 30 days have elapsed.*

(3) A landlord who stores a tenant's personal property under subsection (1) shall, at the earliest reasonable opportunity,

*(a) **provide the director with an inventory** of the property; and*

*(b) **provide the tenant with a copy of the inventory**, if the landlord can locate the tenant.*

(4) The director may, on application by the landlord under section 42, authorize the landlord to dispose of personal property referred to in subsection (1) where the director believes on reasonable grounds that

(a) the personal property has no monetary value;

(b) the cost of removing, storing or selling the personal property would be more than the proceeds of the sale; or

(c) the storage of the personal property would be unsanitary or unsafe.

(5) This section does not apply where a landlord and a tenant have made an agreement in writing with respect to the storage of the tenant's personal property.

(6) The tenant or owner of the personal property may, within the 30 day period referred to in subsection (2), claim and take possession of the personal property by paying the landlord the costs reasonably incurred by the landlord to remove and store the property.

19. In accordance with Section 32 it was the responsibility of the landlord to store, itemize and apply for permission to dispose of the property. The property must be held for a minimum of 30 days. The landlord doesn't dispute the existence of the items or that they disposed of the items within the two weeks after the tenants moved. The landlord did not have the right to dispose of the property.
20. The tenants have not shown proof of the actual cost of items replaced and therefore an arbitrary monetary award of \$250.00 will be paid by the landlord for the replacement of the disposed items.

Decision

21. The tenants claim for compensation for possessions returned succeeds in the amount of \$250.00.

Issue 2: Payment for oil \$132.52 and payment for rent \$541.94

Landlord's Position

22. The landlord is seeking payment for oil and rent as the tenant did not provide the correct notice for termination of their agreement.
23. She acknowledges that the tenants' rental agreement does not break down rent and utilities; therefore she is requesting for the purpose of the decision, to add these two balances and seek \$677.46 rent.
24. She said that she received notice by phone on 29-April-2023. She adds that even if the tenant had given notice on 09-April-2023, as he states, in a month to month notice they still would be responsible for May. They did get a new tenant 15-May-2023 so they are only seeking ½ of the months' rent. She provided a rent ledger (LL#01).

Tenants' Position

25. Tenant1 said that the house was without cable for two weeks and that they ran out of oil twice. He states he told the landlord when he paid the rent on 02-April-2023 that they would be terminating their agreement.

Analysis

26. The notification that was given to the landlord was verbal. This is in violation of the *Act* as per Section 34, as follows:

Requirements for notices

34. A notice under this Act shall

- (a) be in writing in the form prescribed by the minister;***
- (b) contain the name and address of the recipient;***
- (c) identify the residential premises for which the notice is given; and***
- (d) state the section of this Act under which the notice is given.***

27. Both parties acknowledge that the landlord is responsible to provide oil in accordance with the rental agreement and the agreed failing of the landlord to provide this service would give the tenants the ability to give notice effective immediately. The tenants however failed to provide their notice in writing and thereby are responsible for the loss of rent incurred by the landlord from the period of 02-14-April-2022.

28. The landlord clearly mitigated their loss by having the house ready and rented in less than two weeks. The landlord shall be awarded a daily rate for rent lost from 02- 14 of April; a period of 13 days. The daily rate is calculated as follows:

$$\begin{aligned} \$1,500 \times 12 \text{ months} &= \$18,000 \text{ a year} \\ \$18,000 \text{ divided by } 365 \text{ days} &= \$49.32 \text{ a day} \\ \$49.32 \times 13 \text{ days} &= \$641.16 \end{aligned}$$

29. The landlord's claim for rent succeeds in the amount of \$641.16.

Decision

30. The landlord's claim for lost rent succeeds in the amount of \$641.16.

Issue 3: Security deposit returned/applied \$740.00

Relevant submissions

31. Both parties are seeking the security deposit.

Analysis

32. The security deposit is the property of the tenants and shall be applied to monies owed to the landlord with the balance of \$98.84 being returned to the tenants. As follows:

- Security deposit..... \$740.00
- Less rent owed..... 641.16
- Total \$98.84

Decision

33. The tenants' claim for return of security deposit succeeds in the amount of \$98.84.

Summary of Decision

34. The landlord shall compensate the tenants \$348.84; for the return the security deposit and cost of compensation for possessions less rent owed; as follows:

- Rent owed..... (\$641.16)
- Compensation for possessions 250.00
- Security deposit 740.00
- Total..... \$348.84

April 11, 2023

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office