

Residential Tenancies Tribunal

Application 2023-0167-NL
2023-0557-NL

Decision 23-0167-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:15 a.m. on 19-July-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] [REDACTED] hereinafter referred to as "the landlord" attended by teleconference.

Preliminary Matters

4. The landlord submitted an affidavit (LL#01) stating that they served the tenants with notification of today's hearing electronically on 05-July-2023. The tenants confirmed receipt of notification as stated. The tenants did not serve the landlord with notification of today's hearing (they had served for a previous hearing [TT#01]); the landlord waived his right to service.
5. The tenants removed rent refunded \$3,600.00 from their application.

Issues before the Tribunal

6. The tenants are seeking:
 - Security deposit returned \$1,350.00

The landlord is seeking

- Rent paid \$1,800.00
- Damages \$400.00
- Security deposit retained \$1,350

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*.
8. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 18: Notice of termination of rental agreement and Section 20: Notice where material term of agreement contravened.

Issue 1: Rent Paid \$1,800.00

Landlord's Position

9. The landlord submitted the rental agreement (LL#02) held with the tenants. The tenants have a one year lease beginning 01-July-2022 and ending 30-June-2023. The tenants pay \$1,800.00 a month rent which includes utilities. The rental period is from the first day of the month until the last; rent is due in full on the first day of each month. They paid a security deposit of \$1,350.00 on 11-June-2022 and the landlord is still in possession of the deposit. The tenants moved out on 02-September-2022.
10. The landlord said that the tenants were high maintenance. After living there for two months they decided that the unit wasn't clean enough for them. Tenant1's mother became involved and was requesting to meet with the landlord and was making demands.
11. The landlord said that on 30-August-2022 he sent over a cleaner. He said that the tenants' behavior was erratic and they were nervous to send the cleaning lady on her own, so they sent a male caretaker with her. He said that this turned out to be a good idea, because tenant1's mother was yelling at the cleaner and when the cleaning lady and caretaker decided to leave, they reported that the tenant1's mother, grabbed the cleaner and pushed her against the wall and declared that she wasn't leaving until the place was cleaned to her standards. The landlord said that the staff managed to get out of the house.
12. He said while they were contemplating whether or not to press charges for the assault, the tenants called a U-Haul and moved out. He said that they didn't take everything and left dirt and debris behind. 02-September-2022 he changed the locks.
13. He said the entire incident was bizarre. They did not give the tenants notice and he did not post a notice of abandonment because they saw them move out.
14. He said that they rented again in October and is seeking lost rent for September.

Tenants' Position

15. Tenant1 confirms the details of the rental agreement, he points out that this agreement was made with a different staff member. Both tenants said at the time of the initial walk through there was an agreement with the other staff member that there was work required to the unit before they would take occupancy and that it would be completed by the landlord.

16. The tenants said that the work wasn't completed and tenant2 explained that they submitted a request for repairs for the cleaning to be completed on 17-August-2022, she said that at 7:02 a.m. the landlord told them that they could leave. She said on 23-August-2022 the work was still not completed.
17. Tenant2 said that tenant1's mother accidentally hit the cleaning lady on her back. She said that there was no holding or grabbing. Tenant1 said he videotaped the whole incident but the tape clicked off during the time of the incident and restarted when they left. He tried to submit the tape for the hearing, but was unsuccessful.
18. Tenant2 said that the cleaning lady was saying that she had cleaned the place and he thought that this was not good enough. He said, she pushed past them heading to the door. He thought she was very aggressive and that they were intimidated.
19. He said that they went back to collect their belongings on 02-September-2022 the locks were changed. They had to call the police for support and an escort to collect their belongings that were left behind.
20. They did not give the landlord notice.

Analysis

21. The tenants may not terminate a term lease without cause until the conclusion of the lease, which is 30-June-2024, as follows:

Notice of termination of rental agreement

18. (1) A tenant shall give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises

- (a) not less than 7 days before the end of a rental period where the residential premises is rented from week to week;***
- (b) not less than one month before the end of a rental period where the residential premises is rented from month to month; and***
- (c) not less than 2 months before the end of the term where the residential premises is rented for a fixed term.***

22. The tenants stated that they had issues with the property being unclean and that the other landlord had made promises of repairs prior to them taking occupancy. A tenant may give notice for failure to make repairs

Notice where material term of agreement contravened

20. (1) Notwithstanding subsection 18(1) and paragraph 18(3)(a), where a landlord contravenes a material term of a rental agreement, the tenant may give the landlord written notice of the contravention, and if the landlord fails to remedy the contravention within a reasonable time after the notice has been served, the tenant may give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises.

23. Tenant2 had indicated that they had given the landlord a notice to repair, which is the first step in giving a notice for cause for "Notice where material term of agreement contravened." However they did not follow the appropriate steps to end their agreement and abandoned the property without notice.
24. It is clear from both parties testimony that the situation at the apartment on 30-August-2022 was highly charged and emotions got out of hand. The fault seems to lie with the tenants, the landlord provided a cleaner and she was attempting to complete her duties. Tenant1's mother was clearly aggressive and to add to this situation, tenant1 was videotaping his mother harassing and assaulting the cleaner.
25. I accept that the tenants may have had ongoing frustrations with their landlord, however they signed a contract and failed to fulfil their obligations. They have caused the landlord the loss of the income for the apartment for the month of September and are liable for this cost.
26. The landlord's claim for rent succeeds in the amount of \$1,800.00.

Decision

27. The landlord's claim for rent succeeds in the amount of \$1,800.00.

Issue 2: Damages \$400.00

Landlord's Position

28. The landlord provided the cost for cleaning upon the tenants' move: 10 hours at \$40.00, receipt provided (LL#03). He did not submit pictures.

Analysis

29. I do not accept the claim for cleaning. The landlord and tenants both testified that the tenants only lived in the unit for two months and that there was a cleaner on site who was cleaning at the time they abandoned the premises. There was no evidence of cleaning required submitted by the landlord.

Decision

30. The landlord's claim for damages fails.

Issue 3: Security deposit retained \$1,350.00

Issue 4: Security deposit refunded \$1,350.00

Relevant Submissions

31. Both parties are seeking receipt of the security deposit.

Analysis

32. The landlord's claim for loss has been successful, paragraph 27, and he shall retain the deposit as per Section 14 of the *Residential Tenancies Act, 2018*, see below:

Security deposit

14. (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

Decision

33. The landlord's claim to retain the security deposit against monies owed succeeds in the amount of \$1,350.00.

Issue 5: Hearing expenses reimbursed \$20.00

34. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#04) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

Summary of Decision

35. The tenants shall pay to the landlord \$470.00, as follows:

- Rent \$1,800.00
- Hearing expenses 20.00
- Less security deposit (1,350.00)
- Total \$470.00

The landlord shall retain the security deposit of \$1,350.00 against monies owed.

July 26, 2023

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office