

Residential Tenancies Tribunal

Applications: 2023 No. 0181 NL

Decision 23-0181-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 1:48 PM on 01 May 2023 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing. The respondents, [REDACTED], [REDACTED], [REDACTED], and [REDACTED], hereinafter referred to as "tenant1", "tenant2" and "tenant3" respectively, all participated in the hearing.
3. An affidavit of service was provided by the landlord (L#1) confirming that tenant1 was served personally with three copies of his claim on 13 April 2023. Tenant1 confirmed that she then provided tenant2 and tenant3 with notice and all tenants confirmed that service was received.
4. The details of the claim were presented as originally fixed term rental agreement that became month to month prior to terminating on 10 May 2022. A copy of the original rental agreement was provided (L#2) and all parties agreed that the tenancy started early on 10 December 2020. Monthly rent was \$1,100.00 due at the first of the month, POU and a security deposit in the amount of \$550.00 was collected.
5. In a proceeding under the *Residential Tenancies Act*, 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. The standard of proof, in these proceedings, 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 rent to be paid in the amount of \$2,900.00;
 - An order for compensation for damages to be paid in the amount of \$950.00; and
 - An order to retain the security deposit in the amount of \$550.00.

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, 14 and 19 of the *Act*.

Preliminary Matters

9. The landlord and tenants agreed that a document was signed on 13 May 2022 wherein everyone agreed that (L#3):
 - \$3,220.00 was owed in back rent;
 - The tenants will pay \$950.00 towards damages caused;
 - That the security deposit will be retained by the landlord; and
 - Than only a single payment of \$220.00 was then received by the landlord towards these arrears.

Issue 1: Payment of Rent (\$2,900.00)

Landlord's Position

10. The landlord testified that he was approached in April 2022 and asked how much notice he needed because the tenants could no longer afford rent. He said that he advised them that a month would be required. He testified that he then became aware on 10 May 2022 that the tenants had vacated, leading him to then create and have signed the document mentioned in paragraph 9. The landlord referred to a rent ledger submitted showing \$2,900.00 owing in rent (L#4) and testified that he was not able to secure new tenants for two months because he first had to complete repairs.

Tenant's Position

11. Tenant1 stated that they stopped residing in the rental premises as of 30 April 2022 but agreed that their belongings remained in the premises until 10 May 2022. Tenant1 also agreed that she gave notice in late April 2022 that she would be vacating. She disputed the landlord's claim for rent for the entire month of May 2022 but agreed that \$1,800.00 was owed in rent as at 30 April 2022.

Analysis

12. I accept the landlord and tenants agreed that the tenancy was month to month and that notice was provided in late April 2022 that the tenancy would be ending. I also accept that both sides agree that the tenancy in fact ended on 10 May 2022 and that the rental premises was not automatically occupied by new renters. Consequently, I accept the landlord's claim that he is entitled to full payment of \$1,100.00 in rent for May 2022 in lieu of notice (see 18(1)(b) of the Act) making for a total of \$2,900.00 for rent owing.

Decision

13. The landlord's claim for rent succeeds in the amount of \$2,900.00.

Issue 2: Compensation for Damages (\$950.00)

Landlord's Position

14. The landlord testified that the house was built in 1972 and that it was fully renovated prior to it being occupied by the tenants. He referred to an inspection report completed on move in and move out to emphasize the damages (L#5). He testified that there was much more damage caused than claimed but did not provide any receipts, photos or other documentation related to these damages. The landlord testified that he spent two months repairing damage in the premises.

Tenant's Position

15. The tenants agreed with the inspection report but denied signing it. Tenant1 stated that the tenants should have been able to use the remainder of May 2022 to repair any damages caused. However, she did not provide any evidence to verify this claim. Tenant1 also testified that, the only reason they did not uphold the repayment plan referred to in paragraph 9, was because she received a "nasty" phone call from the landlord's wife.

Analysis

16. 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).

17. 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.
18. Regarding this dispute, the landlord and tenants agreed that the damage was caused and repairs were required. As such, I find the landlord's claim succeeds as presented.

Decision

19. The landlord's claim for damages succeeds in the amount of \$950.00.

Issue 3: Security Deposit \$550.00

Relevant Submissions

20. The rental agreement provides evidence of a \$550.00 security deposit (L#2).

Analysis

21. 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.*

22. As the amount owing to the landlord for rent and damages exceeds the security deposit collected, I find that the landlord is entitled to retain the full \$550.00.

Decision

23. The landlord shall retain the full value of the \$550.00 security deposit.

Issue 4: Hearing Expenses

24. The landlord claimed the \$20.00 expense of applying for this hearing. As his claim has been successful, the tenants shall pay this expense.

Summary of Decision

25. The landlord is entitled to the following:

- To retain the full value of the \$550.00 security deposit.
- An order for payment from the tenant in the amount of \$3,320.00 determined as follows:
 - a) Rent..... \$2,900.00
 - b) Damages..... \$950.00
 - c) Hearing Expenses \$20.00
 - d) LESS Security Deposit..... (\$550.00)
 - e) Total..... \$3,320.00

05 May 2023

Date

Jaclyn Casler
Residential Tenancies Tribunal