

Residential Tenancies Tribunal

Application 2023-0224-NL
2023-0392-NL

Decision 23-0224-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:03 a.m. on 29-May-2023.
2. The applicant, [REDACTED] hereinafter referred to as "the tenant" attended by teleconference.
3. The respondent, [REDACTED] hereinafter referred to as "the landlord" attended by teleconference.

Preliminary Matters

4. Both parties confirmed that they received electronic notification of today's hearing, from our department, on 25-April-2023.

Issues before the Tribunal

5. The tenant is seeking
 - Security deposit refunded \$431.25

The landlord is seeking

- Rent \$1,150.00
- Security deposit retained against monies owed \$431.25

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 14: Security deposit, Section 23: Notice where landlord

contravenes peaceful enjoyment and reasonable privacy, and Section 35: Service of Documents.

Issue 1: Rent \$1,150.00

Landlord's Position

8. The landlord reviewed the details of the rental agreement. He said they signed a term agreement from 01-September-2022 until 31-July-2023. The landlord states that the tenant arrived late September and that he gave her keys to a friend of hers on 06-September-2023 when the security deposit of \$431.25 was paid. The tenant paid \$575.00 a month for a room in a house with shared common spaces. He said that she gave notice and moved 28-February-2023.
9. The landlord said that the tenant provided him a termination notice (LL#01). The notice is signed and dated for 23-February-2023 with a termination date of 01-March-2023.
10. The landlord disputes this notice and states he lost rent for the months of March and April. He explained that in October the tenant first told him that her husband was moving [REDACTED] and that she wanted to get out of the lease; texts provided (LL#01). He then he started advertising the room in January, because the tenant had told him in December that she wanted to move in February. In December she tells him that there isn't an issue with the house, but she wants to move for personal reasons; text provided (LL#01). The landlord stated, he told her she couldn't just break her lease. He agreed because she wanted to move, if they could find someone else to rent the room he would agree to end the lease.
11. The landlord advertised in January on [REDACTED] he stated he renewed his ad regularly, he did have interest in the room but was unable to find a renter until May. He said that the room usually houses university students and in February it was a difficult time to find someone new.
12. The landlord stated that you can see in the texts that she complains of issues in the house and then when he asks her about what is going on, she tells him that everything is fine. It is a shared house with individuals renting their room and sharing living spaces. He believes that the tenant is using peaceful enjoyment as a reason to get out of her lease. He further explains that many of the issues are to do with cleaning and that this is the responsibility of the tenants.
13. Further to this the landlord points out that he wasn't served with the appropriate time lines. The notice is dated for 23-February but the tenant emailed him the notice 25-February-2023 at 3:41 p.m.; email provided (LL#02). He said that 25-February-2023 is a Saturday so this isn't served until Monday 27-February-2023.

Tenant's Position

14. The tenant provided a copy of the rental agreement (TT#01) she confirms the terms of the agreement as stated by the landlord and states she moved in on 30-September-2022.

15. The tenant stated that she didn't like to complain about the other tenants in the house because she was new to the house and she was concerned that the other tenants would know about her complaining.
16. She said that the other people would use her shampoo, conditioner, vegetable oil, etc. She explained that she tried to keep these things in her room.
17. She said she didn't like it there. She said that they smoke in the house and that the house is dirty. She provided videos of the house (TT#03).

Analysis

18. The burden of proof for a termination due to interference with peaceful enjoyment and reasonable privacy, falls to the person giving the notice. The tenant is therefore required to show that the landlord is violating her rights as follows:

Statutory conditions

10. (1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:

....

7. Peaceful Enjoyment and Reasonable Privacy -

- (a) The tenant shall not unreasonably interfere with the rights and reasonable privacy of a landlord or other tenants in the residential premises, a common area or the property of which they form a part.***
- (b) The landlord shall not unreasonably interfere with the tenant's reasonable privacy and peaceful enjoyment of the residential premises, a common area or the property of which they form a part.***

According to Residential Tenancies Policy 7-05 Peaceful Enjoyment, interference of peaceful enjoyment is defined as: "an ongoing disturbance or activity, outside of normal everyday living, caused by the landlord or the tenant". Peaceful enjoyment may include, but is not limited to the following: (i) excessive noise; (ii) aggressive or obnoxious behaviour; or (iii) threats and harassment.

19. I agree with the landlord that he was not interfering with the tenants' rights, additionally, he is also correct that maintaining the premises in a clean state is the responsibility of the tenant not the landlord.
20. Further to this, the notice fails due to timelines. The landlord provided evidence that although the notice was signed on 23-February-2023, as it was sent electronically on Saturday 25-February-2023, in accordance with Section 35, of the Residential Tenancies Act, 2018, this notice is not considered served until Monday 27-February-2023, as follows:

Service of documents

35. (6) For the purpose of this section, where a notice or document is sent electronically, it shall be considered to have been served on the day it is sent, if the document is sent by 4 p.m., or the next day that is not a Saturday or holiday, if the document is sent after 4 p.m.

21. When calculating the time for a notice you are not to include the day of service or the day of the event, therefore this was actually one day's notice. A Section 23 notice should provide 5 – 14 days' notice, as follows:

Notice where landlord contravenes peaceful enjoyment and reasonable privacy

23. (1) Notwithstanding subsection 18(1) and paragraph 18(3)(a), where a landlord contravenes statutory condition 7(b) set out in subsection 10(1), the tenant may give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises on a specified date not less than 5 days, but not more than 14 days, after the notice has been served.

22. The tenant's notice doesn't meet the timeless and is not valid. The termination of this notice is to the disadvantage of the landlord. He was aware that the tenant intended to end her lease and began advertising the room, with an agreement to agree to end the lease if a new renter had been found. He did not find a renter until May. The landlord attempted to mitigate his loss but was unsuccessful for the two months of March and April.
23. I find that the tenant's notice isn't valid and that she is responsible for the landlord's rent loss totaling \$1,150.00.

Decision

24. The landlord's claim for rent succeeds in the amount of \$1,150.00.

Issue 2: Security deposit applied to monies owed (\$431.25)

Issue 3: Security deposit returned

Relevant Submissions

25. Both parties are seeking the security deposit. The tenant sent the landlord notification of her claim on 05-April-2023. The landlord filed a counter application on 10-April-2023. As stated in paragraph 8 the tenant paid a security deposit of \$431.25. The landlord is requesting to retain the security deposit against monies owed.

Analysis

26. The landlord's claim for loss has been successful, paragraph 23, and he shall retain the deposit as per Section 14 of the *Residential Tenancies Act, 2018*, see below:

Security deposit

14. ...

(8) A security deposit is not an asset of the landlord but is held by the landlord in trust and may be used, retained or disbursed only as provided in this section.

(9) Not later than 10 days after the tenant vacates the residential premises, the landlord shall return the security deposit to the tenant unless the landlord has a claim for all or part of the security deposit.

(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.

(11) Where a tenant makes an application under paragraph (10)(b), the landlord has 10 days from the date the landlord is served with a copy of the tenant's application to make an application to the director under paragraph (10)(b).

(12) A landlord who does not make an application in accordance with subsection (11) shall return the security deposit to the tenant.

(13) Where a landlord does not make an application under paragraph (10)(b) or return the security deposit in accordance with subsection (12), the director may, without conducting a hearing, make an order requiring the landlord to 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.

(15) For the purpose of subsections (8) to (14), "security deposit" includes the interest credited under subsection (7).

27. Section 14 states that once a tenant makes an application for the return of the security deposit, the landlord has 10 days to file a claim, from the date they are notified of the application. As the landlord filed a claim within the 10 day period and he has suffered financial loss, I find he shall retain the security deposit against that loss.

Decision

28. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$431.25.

Issue 4: Hearing expenses reimbursed

29. The tenant submitted a receipt for \$50.00 (TT#05) for the cost of a commissioner of oaths and the landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#03.) Pursuant to policy 12.01, as the landlord's claim has been successful, he is entitled to reimbursement of that cost from the tenant.

Summary of Decision

30. The tenant shall pay \$738.75, to the landlord as follows:

- Rent \$1,150.00
- Hearing Expenses 20.00
- Less security deposit (431.25)
- Total \$738.75

The landlord shall retain the security deposit of \$431.25 against monies owed.

June 09, 2023

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office