

Residential Tenancies Tribunal

Application 2023-0281-NL
2023-0563-NL

Decision 23-0281-NL

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:32 a.m. on 04-July-2023.
2. The applicant, [REDACTED] hereinafter referred to as “the landlord” attended by teleconference.
3. The respondent, [REDACTED] hereinafter referred to as “the tenant” attended by teleconference.
4. The tenant submitted an authorized representative form naming [REDACTED] (TT#01), she attended the latter part of the hearing.

Preliminary Matters

5. Both parties served each other electronically with notification of the hearing. The landlord served the tenant on 22-June-2023 (LL#01) and the tenant served the landlord on 20-June-2023 (TT#02); both provided proof of service.
6. The landlord amended her claim to remove premises vacated from the application as the tenant has already moved from the premises.

Issues before the Tribunal

7. The landlord is seeking
 - Rent \$900.00
 - Late fees \$33.00
 - Damages \$2,000.00
 - Other \$15,250.00
 - Security deposit applied (\$675.00)
 - Hearing expenses \$20.00

The tenant is seeking

- Security deposit returned \$675.00

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
9. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*:

Issue 1: Rent \$900.00

Landlord's Position

10. The landlord submitted a copy of the written rental agreement (LL#02) held with the tenant. The tenant had moved in on 01-November-2021, initially they had a six month agreement and then they had a term agreement that was completed on 31-May-2023, the agreement was then to become monthly. The tenant pays \$900.00 on the first day of each month for rent with utilities included. On 01-November-2021 he paid her a security deposit of \$675.00; she is still in possession of that deposit.
11. The tenant moved out on 31-May-2023, she said that he had sent her an email on 01-June-2023 (LL#03) saying he had moved out and that the keys were on the counter. The landlord had served the tenant a number of termination notices and she said he sent her a number of messages harassing and begging her to let him stay there (LL#07). She sent him a notice on 25-March-2023 telling him she wouldn't be renewing his lease. She said that she didn't want to sign another term agreement with the tenant because there had been issues. She told him his lease is ended on 31-May-2023.
12. Because he was harassing her and begging her to stay (LL#07) she offered him a monthly agreement, but she then gave him another notice to terminate dated 30-June-2023 (LL#08).
13. She explains that she was happy he had moved out because she wanted to end the agreement. She said he gave her no notice and is seeking rent for the month of June, which is his notice period.

Tenant's Position

14. The tenant confirms the details of the rental agreement. He said that the landlord had given him a number of notices and he didn't understand why. He explained he pays his rent on time and is a good tenant.
15. The tenant also confirms that the landlord had given him notice that the term agreement was not going to be renewed and that he was to vacate the end of May.
16. The tenant agrees that the landlord offered a monthly agreement and that she then gave him another notice for the end of June. He said he didn't agree to the monthly agreement he wanted a term agreement, so he moved out on his termination date at the

end of the agreement as requested by the landlord. He does not agree he owes rent for June.

Analysis

17. It is clear that the landlord's inability to make a final determination around this tenancy would be confusing for any tenant. The tenant was repeatedly told that his rental agreement was terminated. The landlord's perception that he was "harassing her" and "begging her," is not clear, in the landlord's evidence (LL#07) the tenant is writing the landlord stating "I'm a good tenant I pay my rent and take care of the place," "This isn't fair. Please just tell them your (sic) allowing me to stay," "please reconsider this decision."
18. The landlord's notice for the end of May doesn't meet the timelines in Section 18 of the *Residential Tenancies Act, 2018*. However if both parties agree to the date then the notice is acceptable.
19. Additionally, I accept that the tenant was not interested in continuing a monthly agreement with the landlord and did not agree to this change in his rental agreement. His point is valid that he accepted the notice given for the end of his term. In accordance with Section 18 of the *Residential Tenancies Act, 2018*, the term ended, the tenant moved and the landlord had given him a termination notice, the tenant was acting in accordance with the *Act* 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.

(2) A landlord shall give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises

(a) not less than 4 weeks before the end of a rental period where the residential premises is rented from week to week;

(b) not less than 3 months before the end of a rental period where the residential premises is rented from month to month; and

(c) not less than 3 months before the end of the term where the residential premises is rented for a fixed term.

...

(5) Notwithstanding subsections (1) to (3), a notice of termination is not required to be given where a landlord and a tenant agree in writing to terminate the rental agreement on a specific date.

(6) Notwithstanding subsections (1) to (3), a landlord and tenant may agree in writing to a longer notice period.

(7) Where a landlord gives a tenant notice that the rental agreement is terminated under subsection (2) or paragraph (3)(b), the applicable notice period in subsection (1) or paragraph (3)(a) continues to apply in respect of the tenant.

20. The term agreement ended on 31-May-2023 and the tenant moved as directed by the landlord's termination. He did not stay past the termination date and he didn't agree to change his agreement to monthly. The final notice for the month of June is not valid as there is no established landlord tenant relationship during that time. The landlord's claim for rent therefore fails.

Decision

21. The landlord's claim for rent fails.

Issue 2: Late fees \$33.00

Landlord's Position

22. The landlord submitted evidence of bank deposits (LL#04) sent to her from the tenant for his rent. The first is for \$500.00 on 02-August-2022 and the second is for \$400.00 on 16-August-2022. She is seeking \$33.00 late fees for the August 2022 rent.

Tenant's Position

23. The tenant doesn't dispute the late payment. He said that this was the only month during the tenancy that he was late with his rent and he had offered to pay late fees. At that time, he said the landlord told him that he didn't need to pay late fees.

Analysis

24. Section 15 of the *Residential Tenancies Act, 2018* states:

Fee for failure to pay rent

15. (1) Where a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister.

The minister has prescribed the following:

Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed

(a) \$5.00 for the first day the rent is in arrears, and

(b) \$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00.

25. There is no dispute, the tenant confirms that the August rent was late, as stated by the landlord. The landlord is entitled to late fees, the tenant shall pay to the landlord \$5.00 for 02-August-2022 and \$2.00 for each day from 03-15 August for a total of 13 days. \$5.00 + 26.00 = \$31.00.

Decision

26. The landlord's claim for late fees succeeds in the amount of \$31.00.

Issue 3: Damages \$2,000.00

Landlord's Position

27. The landlord is seeking \$2,000.00 for inconvenience caused by the tenant. She provided copies of emails, from March 2023, between herself, her property manager and the tenant. (LL#05). She explained that the tenant had complained that the [REDACTED] upstairs would try to get into his apartment and that she sent a worker to change the key so that only the downstairs tenant would have the key. When the contractor arrived he couldn't find the key and the tenant wasn't there. She believes that the tenant had put the key somewhere so that this work could not be done.
28. Additionally in March 2023, she provided emails (LL#05) to support that the tenant complained that the heaters were not working. Again, when she sent a repair person, the heaters were on.
29. The landlord believes that the tenant was trying to inconvenience her. She did not provide receipts for the cost of the repairs.

Tenant's Position

30. The tenant said that the entire time he lived at the apartment people would come into his area. He said even when the landlord and [REDACTED] lived upstairs they would come into his space. He believes that the people renting [REDACTED] would not realize that his area was separate and they would come into his apartment.

Analysis

31. The landlord is responsible to maintain the property in good condition as per Section 10 of the Residential Tenancies Act, 2018, 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:

1. Obligation of the Landlord -

- (a) The Landlord shall maintain the residential premises in a good state of repair and fit for habitation during the tenancy and shall comply with a law respecting health, safety or housing.***

(b) Paragraph (a) applies regardless of whether, when the landlord and tenant entered into the rental agreement, the tenant had knowledge of a state of non-repair, unfitness for habitation or contravention of a law respecting health, safety or housing in the residential premises.

32. The landlord has failed to prove that the tenant was acting with malleolus, she also has not shown the costs of the inconvenience; for these reasons her claim for damage / inconvenience fails.

Decision

33. The landlord's cost for damages fails.

Issue 4: Other \$15,250.00

Landlord's Position

34. The landlord submitted evidence that the tenant was smoking on the property (LL#06). The evidence shows that in accordance with Part 11 of the tenant's rental agreement smoking is not permitted. She said that she never gave permission for the tenant to smoke anywhere on the property including the garage. She also provided text messages from December of 2021 asking the tenant not to smoke again because the smell is coming into her part of the house and it is making herself and her son sick. The tenant responds telling her that this will not happen again. She issued him a termination notice because the smoking continued. (This notice failed)
35. The landlord was unwell and was out of the Country for treatment. She decided to rent the main part of the house [REDACTED] In September she had a renter who was going to rent the property for \$3,500.00 a month. As they were moving in they smelled the smoke and cancelled the contract. She provided the texts (LL#06) between herself and the tenant about this issue and she asked him to move out.
36. After this incident she said [REDACTED] Initially they were not made aware of the suspension. She said it was a result of the smoking on the property which is not tolerated. The property was reinstated about a week later.
37. The landlord could not determine how much money was lost, or how much she is claiming for this part of the claim. She did not provide evidence of when the unit was rented or evidence from Airbnb around the cancelling of the contract or suspension.
38. The landlord said that she has been unwell and that the smoking causes health damage as well as interfered with her and her son's ability to sleep. She is seeking \$2,500.00 for this pain and suffering.
39. The landlord stated that the entire apartment had to be painted because of the smoke. She did not know if this work had been completed. She did not provide evidence, for example pictures showing the necessity of the work. She did not provide receipts. She is seeking \$2,000.00.

Tenant's Position

40. Both the tenant and the authorized representative said that the tenant did not smoke in the apartment and that there was no smell of smoke. The tenant stated that this issue was already raised in hearing (2022-0811-NL) and it was shown that they didn't prove he had smoked in the apartment. He said that the landlord had told him he could smoke on the outside part of the property and even offered the use of the garage when the weather was poor.
41. The tenant also disputes that he is responsible for the painting of the apartment. He said that there was no damage and that there would have been only normal wear and tear.

Analysis

42. Under Section 10.(1)2. of the *Residential Tenancies Act, 2018* the tenant is responsible to keep the premises clean and to repair any damage caused by a willful or negligent act.

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:

2. Obligation of the Tenant - The tenant shall keep the residential premises clean, and shall repair damage caused by a wilful or negligent act of the tenant or of a person whom the tenant permits on the residential premises.

Accordingly, in any damage claim, the applicant is required to show:

- That the damage exists;
 - That the respondent is responsible for the damage, through a willful or negligent act;
 - The value to repair or replace the damaged item(s)
43. The landlord has shown that smoking is a violation of the tenant's rental agreement, however she has failed to show that the tenant actually smoked inside the apartment. She is seeking loss for income [REDACTED] yet she has not provided evidence to support her claims of loss of rental agreement or actual financial records to show what income she had compared to what income she should have.
 44. Additionally, she has claimed for the cost to paint the apartment, however she is unsure if the work was completed or the cost of completion. She has also not shown proof that the work was required. She has failed to show the three components necessary in a damage claim (Paragraph 42): That the damage exists, the tenant is responsible and the cost. Due to the absence of evidence, the landlord's claim for damages fails.
 45. Lastly the landlord has claimed for pain and suffering, this tribunal does not award for the cost of pain and suffering.

Decision

46. The landlord's claim for damages fails.

Issue 5: Security Deposit applied \$675.00

Issue 6: Security Deposit returned \$675.00

Landlord's Position

47. The landlord is seeking to retain the security deposit against monies owed.

Tenant's Position

48. The tenant is seeking the return of the security deposit.

Analysis

49. The landlord's claim for loss was successful, paragraph 26 for \$31.00; she shall retain this portion of the deposit and immediately return the balance of \$644.00 to the tenant as 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.

Decision

50. The landlord's claim for loss was successful, paragraph 26 for \$31.00; she shall retain this portion of the deposit and immediately return the balance of \$644.00 to the tenant.

Issue 4: Hearing expenses reimbursed \$20.00

51. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#08) and pursuant to policy 12.01, as the award does not exceed the amount of the security deposit, hearing expenses related to the filing fee will not be awarded.

Summary of Decision

52. The landlord shall retain \$31.00 for late fees from the tenant's security deposit for late fees.

The landlord shall immediately return the balance of the security deposit of \$644.00 to the tenant; as follows:

Security deposit	\$675.00
Less late fees	<u>31.00</u>
Remaining security deposit	<u>\$644.00</u>

July 11, 2023

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office