

Residential Tenancies Tribunal

Application 2023 No. 405NL
Application 2023 No. 508NL

Decision 23-0405-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 2:10 PM on 06 July 2023 via teleconference.
2. The applicants, [REDACTED] hereinafter referred to as "the tenants", were represented at the hearing by [REDACTED] and a letter of authorization is on file.
3. The respondent, [REDACTED] was represented at the hearing by [REDACTED] hereinafter referred to as "the landlord".

Issues before the Tribunal

4. The tenants are seeking an order for refund of a \$900.00 security deposit.
5. The landlord is seeking the following:
 - An order for a payment of rent in the amount of \$3250.00, and
 - Authorization to retain the \$900.00 security deposit.

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 sections 14, 18, and 34 of the *Residential Tenancies Act, 2018*.

Issue 1: Rent - \$3250.00

Relevant Submissions

The Landlord's Position

8. The landlord stated that he had entered into 6-month, fixed-term lease with the tenants on 01 December 2022. The agreed rent was set at \$1300.00 per month, and it is acknowledged in the submitted rental agreement that the tenants had paid a \$900.00 security deposit.
9. The landlord stated that on 10 January 2023 he met the tenants at the rental unit, along with [REDACTED]. The landlord stated that the tenants were complaining about rodents at the unit and they also told him they wished to break their lease. With respect to the rodents, the landlord figured that the tenants were responsible for that issue as they were not properly disposing of their garbage, but he nevertheless had the unit treated for that issue and he received no other complaints from the tenants about that matter. He also testified that he reminded the tenants that they had signed a 6-month lease and they could not merely walk away and not expect to pay their rent. The landlord claimed that the tenants and [REDACTED] were "shocked" to hear this news.
10. Despite the fact that they were informed that they could not break their lease, the landlord stated that, on 27 January 2023, he had received a text-message from the tenants informing him that they were moving out at the end of the month, and he stated that they vacated on 30 January 2023.
11. The landlord testified that after the tenants vacated the property, he started advertising the unit for rent, and he claimed that he was also working with the [REDACTED] to find new tenants. Despite those attempts, the unit sat vacant during the month of February 2023 and he received no rent for that month. In March 2023, the landlord stated that he was able to find 1 person to move into the unit, but as this was a 2 bedroom unit, and only 1 person was moving in, it was agreed that this new occupant would only pay half the rent—\$650.00. The landlord stated that he has not been able to find anyone to occupy that second bedroom.
12. The landlord argued that as the tenants were in a fixed-term lease that was not set to expire until 30 May 2023, they are responsible for the loss of rental income he suffered from the time they moved out through to that date. He calculates that the tenants owe him \$3250.00 (\$1300.00 for February 2023, and \$650.00 for each of March, April and May 2023).

The Tenants' Position

13. [REDACTED] testified that the tenants were having numerous problems with the unit. He claimed that there were mice in the house, that the doors would not lock, and the unit had been broken into on several occasions. [REDACTED] stated that the tenants did not feel safe at the property and, on 07 January 2023, they informed the landlord that they wanted to get out of their lease, and the tenants gave the landlord a verbal termination notice on that date.
14. [REDACTED] testified that the tenants had an agreement with the landlord that if they, or [REDACTED], were able to find new tenants to move into their unit, then the landlord would return the security deposit to them.
15. [REDACTED] claimed that [REDACTED] did, in fact, find new tenants and they put them in contact with the landlord. He stated that these tenants did move into the property and that they were paying the same rate of rent, \$1300.00, each month, and as such, the tenants do not owe rent to the landlord.

Analysis

16. According to section 18 of the *Residential Tenancies Act, 2018*, where a tenant has entered into a fixed-term lease, they cannot terminate that agreement, under normal circumstances, prior to the expiration date set out in the lease—in this case, 30 May 2023. In some cases, though—for example, if the unit is unfit for habitation, or if the landlord commits a breach of the agreement—tenants can terminate a lease on shorter notice, citing these section of the *Act*. But in all cases, regardless of the reason, a tenant is required to provide a written termination notice to the landlord, in the form prescribed by the minister, citing the section of the *Act* under which the agreement is being terminated. Although it was denied by the landlord, [REDACTED] claimed that the tenants had issued a verbal termination notice on 07 January 2023. But for the reasons I have just given, that is not a valid notice.
17. Where tenants vacate residential premises without properly terminating their agreement in accordance with the *Residential Tenancies Act, 2018*, as is the case here, they are considered to have abandoned the property, and they are responsible for any damages caused by that abandonment, including any loss of rental income. The only caveat is that the landlord must mitigate those damages, as required by statutory condition 4, set out in section 10 of the *Act*, which states:

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:

...

4. *Mitigation on Abandonment* - Where the tenant abandons the residential premises, the landlord shall mitigate damages that may be caused by the abandonment to the extent that a party to a contract is required by law to mitigate damages.

18. With respect to the issue of mitigation, the landlord claimed that he had been advertising the unit for rent after he received a text-message from the tenants on 27 January 2023, and that he had been working with [REDACTED] to find replacement renters. [REDACTED] also acknowledged that [REDACTED] had been seeking new tenants with the landlord, and I therefore find that the landlord had met his duty to mitigate.
19. [REDACTED] claimed that [REDACTED] did find 2 new renters for the landlord, but at the hearing he was unable to produce their names, and he stated that this was information that was provided to him by [REDACTED]. I have to regard that testimony as hearsay, and I afford it little weight, and I therefore prefer the landlord's testimony that the unit sat vacant during February 2023, and that he only received half the rent for the remainder of the term of the lease.
20. To conclude then, as the tenants abandoned the rental unit, and as this lease was not set to expire until 30 May 2023, I find that the tenants are responsible for the loss of rental income the landlord suffered from 01 February 2023 to that date: \$3250.00.

Issue 2: Security Deposit

21. The tenants paid a security deposit of \$900.00 on 07 December 2022 and receipt of that deposit is acknowledged in the submitted lease. As the landlord's claim for rent has been successful, he shall retain that deposit as outlined in this decision and attached order.

Issue 3: Hearing Expenses

22. The landlord paid a fee of \$20.00 to file this application. As his claim has been successful, the tenants shall pay this hearing expense.

Summary of Decision

23. The landlord is entitled to a payment of \$2370.00, determined as follows:

a) Rent Owing	\$3250.00
b) Hearing Expenses	\$20.00
c) LESS : Security Deposit..... (\$900.00)	
d) Total Owing to Landlord.....	<u>\$2370.00</u>

10 August 2023

Date

John R. Cook
Residential Tenancies Tribunal