



Residential Tenancies Tribunal

Application 2023-0444-NL

Decision 23-0444-00

Jacqueline Williams
 Adjudicator

Introduction

1. Hearing was called at 9:02 a.m. on 22-June-2023.
2. The applicant, [REDACTED] The authorized representative, [REDACTED] attended by teleconference and hereinafter is referred to as "the landlord."
3. The respondents, [REDACTED] hereinafter referred to as "tenant1 and tenant2" attended by teleconference.

Preliminary Matters

4. The landlord submitted an affidavit (LL#02) stating that the tenants were notified with notice of today's hearing on 23-May-2023 electronically. All parties confirm this service.
5. The landlord's application is amended to include security deposit applied to monies owed \$1,425.00.

Issues before the Tribunal

6. The landlord is seeking
 - Rent \$3,800.00
 - Damages \$3,856.18
 - Security deposit applied to monies owed \$1,425.00

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*.
8. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 10: Statutory conditions, Section 14: Security deposit and Section 18: Notice of termination of rental agreement.

Issue 1: Rent \$3,800.00**Landlord's Position**

9. The landlord submitted a rental agreement (LL#03) held with the tenants. She said that they signed a term agreement from 01-May-2022 until 31-April-2023. The tenants pay \$1,900.00 rent on the first day of each month. The also paid a security deposit of \$1,425.00 on 06-May-2022 and the landlord is still in possession. The tenants vacated on 03-March-2023.
10. The landlord confirms that they sent a letter to the tenants on 28-February-2023 stating that a member of their team had been at the unit for a plumbing issue the day before and that there is a strong odor of animal urine and feces. It was determined at that time that there are two rabbits with full range of a bedroom where they are eating, urinating and defecating. The notice goes on to say that the tenants are in violation of the Residential Tenancies Act and that they are failing to keep the property clean and to repair damage. The tenants are instructed to remove the rabbits, as the property is not pet friendly and they are to clean the unit and replace the laminate. The notice then states that on Friday March 3rd someone will be by to inspect and if the issues are not resolved they may be given a termination notice and be required to vacate in 5 days.
11. The tenants subsequently moved out on 03-March-2023. The landlord submitted the text message with tenant1 (LL#04). Tenant1 states that they are moving out that day and will be gone before 2. The landlord said that they were given no notice by the tenants and that they are in violation of their contract.
12. The landlord had incurred some damages (Issue 2) and had advertised the unit once completed. She said that the second posting of the advertising of the unit was on 11-April-2023; she was unable to determine the date of the first advertisement. She said that they had new renters take possession on 01-May-2023.
13. The landlord is seeking rent for March and April $\$1,900.00 \times 2 = \$3,800.00$. She states that the tenants violated their term agreement by moving out without notice.

Tenant's Position

14. The tenants have a number of issues with the rental agreement held with the landlord. The also submitted their copy of the agreement (TT#02). Tenant1 said that the unit was in a three unit house, however he indicates that the agreement in Part 5 states that the house is an "apartment in a 2-apartment house." He said that they were promised two parking spots, but the driveway was often full and they only had one spot, because there were 3 units and the spots were taken up by other renters. Tenant2 points out that the closing date of the agreement is 31-April-2023, and that this isn't a real date. Finally, in part 11 the "no animals or pets" box is not ticked, however later this becomes an issue.
15. Tenant1 said that they contacted the landlord prior to fostering the bunnies and he provided the text messages (TT#03). The landlord agreed to them having the rabbits.

He points out that his rental agreement (TT#02)³ doesn't indicate that the property is pet free.

16. Tenant2 said that when they received the notice (TT#01) they felt like their only option was to move. She said that the landlord was demanding that they give up their pets or they would be evicted so they couldn't just wait to be evicted and that they had no intent to give up their pets. She acknowledges that the landlord stated may be evicted, but she states that as a person with no legal training she thought the intent of the notice was give up the pets or move out of the property, so they moved.

Analysis

17. In accordance with Section 18 of the *Residential Tenancies Act, 2018*, 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.

18. I acknowledge that the tenants had issues with their rental agreement and understand that they felt compelled to find new accommodations, as they did not wish to surrender their pets. I also agree that they took the necessary steps to ensure they were permitted to have the pets before they got them. That being said, the landlord did not issue a termination notice and the statement that they may issue such notice is not the same as issuing a notice.
19. The tenants' action of moving out without notice has caused undue hardship on the landlord. The landlord did mitigate their loss by completing repairs (Issue 2) and advertising the unit. They did not secure new renters until May and did incur the loss of rent for the months of March and April. I therefore find that the tenants are responsible for the rent for that time period, totaling \$3,800.00.

Decision

20. The landlord's claim for rent succeeds in the amount of \$3,800.00.

Issue 2: Damages \$3,856.18

Landlord's Position

21. The landlord is seeking damages caused by the rabbits who were given free range in one of the bedrooms. She said that the damages to the room were from the rabbits urinating and defecating on the floor. She said that the flooring was soaked with urine and the smell was throughout the entire house.
22. The landlord stated that the flooring in the room was newly installed the year before when the tenants moved in. She said that the flooring and subfloor had to be removed and that the baseboards and trim had to be replaced. The entire space had to be professionally cleaned to get rid of the smell and the walls were painted.
23. The landlord submitted a damages list (LL#06) as follows:

Damages	Cost
Flooring and labour	2108.80
Trim work and labour	478.70
Painting walls and moldings	195.00
Cleaning fees	562.00
Taxes	501.68
Total	3846.18

24. The landlord submitted the contractors billing (LL#07) which directly reflects the damages ledger above.
25. The landlord stated that this room had been completely renovated the year before. She acknowledges that they did update more of the unit before renting, however, she is not seeking those costs from the tenants.

Tenant's Position

26. Tenant1 said that the rabbits did have litter boxes.
27. The tenants submitted pictures of flooring in a different room (TT#03) to show that all the flooring wasn't new. Tenant1 acknowledges that the flooring in the rabbits' room was the grey flooring that the landlord replaced.

Analysis

28. It is the responsibility of the tenants to care for the home and return their rental to the landlord in the same condition as rented. As shown below in Section 10 of the Residential Tenancies Act, 2018:

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.

29. Although stated in paragraph 18 that the tenants took the appropriate steps before getting the rabbits that privilege comes with responsibility and part of the care for pets is the cleaning required to maintain them. It is clear from the testimony of both parties that the rabbits had full use of the room in question and the landlord has provided evidence on the costs incurred.
30. In any damage claim, the applicant is required to show:
- That the damage exists;
 - That the respondent is responsible for the damage, through a wilful or negligent act;
 - The value to repair or replace the damaged item(s)
31. As this room was renovated less than one year prior to the damages occurring, I determine that depreciation is not a determining factor and find that the landlord shall be fully compensated for the damages incurred totaling \$3,856.18.

Decision

32. The landlord's claim for damages succeeds in the amount of \$3,856.18.

Issue 3: Security deposit applied to monies owed \$1,425.00

Relevant Submissions

33. As per paragraph 9, the landlord has declared that, the tenants paid a security deposit of \$1,425.00; they are still in possession of that deposit. They are requesting to retain that security deposit towards monies owed by the tenants for damages to the apartment.

Analysis

34. The landlord's claim for losses has been successful, paragraphs 20 and 32, they 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

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(b) the landlord or the tenant may apply to the director under section 42 to determine the disposition of the security deposit

Decision

35. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$1,425.00.

Summary of Decision

36. The tenants shall pay to the landlord \$6,231.18, as follows:

- Rent \$3,800.00
- Damages 3,856.18
- Less security deposit (1,425.00)
- Total..... \$6,231.18

The landlord shall retain the security deposit of \$1,425.00, against monies owed.

June 28, 2023
Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office