

Residential Tenancies Tribunal

Application 2023-0686-NL

Decision 23-0686-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 2:03 p.m. on 13-September-2023.
2. The applicant, [REDACTED] represented by the homeowner [REDACTED] and the property manager [REDACTED], hereinafter referred to as "landlord1 and landlord2" attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as "the tenant" did not attend.

Preliminary Matters

4. The tenant was not present or represented at the hearing and I was unable to reach him by telephone [REDACTED] at the start of the hearing. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, where the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as he has been properly served. The landlord submitted an affidavit (LL#01) with their application stating that they had served the tenant with notice of the hearing, electronically at [REDACTED] on 04-August-2023. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in his absence.
5. The tenant had filed the primary application (2023-0646-NL), as he did not attend the hearing, this file is dismissed.

Issues before the Tribunal

6. The landlord is seeking
 - Rent \$1,800.00

- Damages \$350.00
- Security deposit applied to monies owed \$250.00
- Hearing expenses \$20.00

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 14: Security deposit, Section 18: Notice of termination of rental agreement, and Section 31: Abandonment of residential premises by tenant.

Issue 1: Rent \$1,800.00

Relevant Submissions

9. Landlord1 submitted the term rental agreement (LL#02) held with the tenant. The agreement is from 01-July-2022 until 30-June-2023. She said he pays \$600.00 on the first day of each month for rent. He rents one bedroom in a house with shared living space, there was availability for 3 other renters, however he was the only one living there at the time of his term. Landlord2 confirmed he was responsible for 25% of the utilities. The tenant paid a security deposit of \$250.00 on 01-July-2022.
10. The landlord said that he moved out 01-March-2023. She said that she did not know that the tenant had moved out. She said that on 22-March-2023 she went in to do a home inspection. The tenant had already moved out and the back door was left open. She didn't have contact with the tenant until he filed a claim against her, up until that time she didn't know he had moved. Prior to this her husband had managed the properties, he had passed away during this time.
11. Landlord1 decided to sell the house and listed it in April. There were no offers and then in the end of August she listed it for rent. The home is rented for September.
12. The landlords provided a rent ledger (LL#03). The ledger shows that the rent was paid in full until the end of March. The landlords are seeking rent from April – June 2023 for lost rent up to the end of the tenancy. The tenant did not give notice and the rent was lost for that period of his term.

Analysis

13. The landlord is seeking rent for the three months after the tenant had lived in the rental. Rent is paid for use and occupancy of a premises, however, the action of the tenant, by abandoning the property, and not informing the landlord by serving a notice to terminate his rental agreement caused the landlord to suffer damages due to loss of rent.
14. Abandonment of property is covered under Section 31 of the Residential Tenancies Act, 2018, as follows:

Abandonment of residential premises by tenant

31. (1) Where a tenant has abandoned the residential premises, the landlord may enter and take possession of the residential premises.

(2) A tenant is considered to have abandoned a residential premises where

(a) the tenant **has vacated** the residential premises;

(b) the rental agreement is **not terminated in accordance** with this Act or the rental agreement; and

(c) rent is **overdue**.

...

15. Additionally, in a term lease agreement, a tenant must have cause to move out prior to the end of that term. As the tenant did not submit a termination notice or attend the hearing we are not provided an explanation as to why the tenant moved. In accordance with Section 18 of the Residential Tenancies Act, 2018, the tenant can give notice not less than two months before the end of the term which is 30-June-2023, 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.

16. The landlords are seeking rent up to the end of the term, in any claim for damages it is incumbent on the applicant to mitigate their loss. I accept the landlords mitigated their loss by immediately listing the home for sale. This did not result in a sale and the tenant's rental area remained unrented during that time period.

17. As the tenant did not provide notice, abandoned the property and caused the landlord financial loss, I agree with the landlords and find that the tenant owes rent totaling \$1,800.00 for rent up to the end of his rental term.

Decision

18. The landlords' claim for rent succeeds in the amount of \$1,800.00.

Issue 2: Damages

Relevant Submissions

19. The landlords submitted a damages ledger (LL#04). They are seeking \$150.00 for the cost of cleaning and \$200.00 for the 25% of the heat for the month of March 2023.
20. Landlord2 said that the bill for cleaning is from the property management company. She said that the total was for \$150.00 + tax. She confirms that they did not provide pictures to show what cleaning was required. She said that there was garbage left behind, the house was left without either packing or cleaning being fully completed. She said that the cleaning took 6 hours for one person.
21. Landlord2 said that the landlords were paying the utilities for the house and then the 4 potential tenants were to reimburse the landlord for their share. The tenant was the only person living there so the landlords would have had to cover the 75%.
22. Landlord2 said that the heat bill for the month of March was in excess of \$800.00. Landlord1 explained that the back door was left wide open and that this door would have been open for most of March 2023 until she discovered it on 22-March-2023. They are seeking \$200.00 for the utilities for March 2023.
23. Landlord2 said that they did not submit receipts for the cost of the property management cleaning fee or for the utility billing.

Analysis

24. In accordance with Residential Tenancies policy 9-3, 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)
25. In a proceeding under the Residential Tenancies Act, 2018, 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. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicant has to establish that his/her account of events are more likely than not to have happened.
26. The landlords did not provide any proof of the damages claimed, they did not show that the damages exist or the value of the costs incurred. I therefore find that the claim for damages fails.

Decision

27. The landlords' claim for damages fails.

Issue 3: Security deposit applied to monies owed \$250.00

Relevant Submissions

28. Landlord1 stated in paragraph 9 that the tenant paid \$250.00 for his security deposit. The landlords are requesting to retain the security deposit against monies owed.

Analysis

29. The landlords' claim for loss has been successful, paragraph 18, 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*

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

Decision

30. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$250.00

Issue 4: Hearing expenses reimbursed \$20.00

31. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#04) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

Summary of Decision

32. The tenant shall pay to the landlord \$1,570.00, for rent and hearing expenses, as follows:

- Rent..... \$1,800.00
- Hearing expenses 20.00
- Less security deposit (250.00)
- Total **\$1,570.00**

The landlord shall retain the security deposit against monies owed totaling \$250.00.

September 20, 2023

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office