

Residential Tenancies Tribunal

Application 2023-0716-NL

Decision 23-0716-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:11 a.m. on 14-September-2023.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the landlord” did not attend.

Preliminary Matters

4. The landlord was not present or represented at the hearing and I was unable to reach him by telephone 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 the notice of 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 tenant submitted an affidavit with his application stating that he had served the landlord via pre-paid registered mail ([REDACTED]) on 16-August-2023 (TT#1). Canada Post tracking indicates that the mail was sent on 11-August-2023 and that the respondent did not retrieve the mail. The applicant confirmed that he did send it on 11-August and he made an error on his affidavit. In accordance with the *Residential Tenancies Act*, 2018 registered mail is considered served 5 days after it has been sent. As the landlord was properly served, and as any further delay in these proceedings would unfairly disadvantage the tenant, I proceeded with the hearing in his absence.
5. According to the tenant, there was a verbal month to month rental agreement that commenced on 1-October-2018. The tenant was locked out of the unit on 7-June-2023. Rent was \$700.00 per month due on the first of each month. A security deposit of \$500.00 was paid on 1-October-2018.

Issues before the Tribunal

6. The tenant is seeking:
 - a. Return of Possessions \$10,700.00
 - b. Compensation for Inconveniences \$1,100.00
 - c. Refund of Security Deposit \$500.00
 - d. 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 is the following sections of the *Residential Tenancies Act, 2018*: Section 10; Statutory Conditions, Section 14; Security deposit and Section 33; Seizure of Property.

Issue # 1: Return of Possessions \$10,700.00

Relevant Submission

9. The tenant testified that the landlord locked him out on 7-June-2023 and all of his personal possessions remained inside the unit. The tenant is seeking compensation to replace his belongings in the amount of \$10,700.00. The tenant's submission is as follows (TT#2):

| | |
|--|-----------|
| Furniture and Electronics | \$5500.00 |
| Kitchen Appliances / Kitchenware | 1050.00 |
| Food | 250.00 |
| Bedding / Towels /Toiletries | 750.00 |
| Clothing | 2750.00 |
| Natural Health Supplements / Medication | 400.00 |

Tenant's Position

10. The tenant testified that he was locked out of his unit as a result of his rent being late. The tenant testified that the landlord agreed to make a day available to him to pick up his belongings, however the tenant had to work that day and tried to arrange for a different day to pick up his belongings. The tenant testified that he made several attempts to reach the landlord in hopes of retrieving his belongings. The tenant testified that the landlord would not answer his calls and he stated that he asked his counsellor at *Stella's Circle* to call for him to try to reach the landlord and that person was also unsuccessful in reaching the landlord. The tenant testified that he contacted the RNC and was told that they would not get involved as it was a residential tenancy issue however they did offer to escort him to the property to get his belongings but they would have to contact the landlord first and it was not a priority for them as they are very busy. The tenant stated he never heard back from the RNC.
11. The tenant stated that his whole life has been in limbo since he was locked out, everything he owns was left inside the unit ranging from his furniture, clothing and important documents to medications. The tenant stated that the entire situation has caused him illness and he wants to be able to replace his personal belongings as soon as possible.

Analysis

12. I accept the tenant's testimony that he was locked out of his unit as a result of late rent and subsequently, all his personal belongings remained inside the unit. I accept that the tenant was unable to reach the landlord to retrieve his personal belongings and I accept that the tenant made every attempt to reach the landlord which included getting both *Stella's Circle* and the *RNC* involved.

13. Section 10 (1) of the *Residential Tenancies Act, 2018* states;

Statutory Conditions

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

5. Entry of Residential Premises - Except in the case of an emergency, the landlord shall not enter the residential premises without the consent of the tenant unless

- a) Notice of termination of the rental agreement has been given and the entry is at a reasonable time for the purpose of showing the residential premises to a prospective tenant or purchaser and a reasonable effort has been made to give the tenant at least 4 hours' notice;*
- b) The entry is made at a reasonable time and written notice of the time of the entry has been given to the tenant at least 24 hours in advance of the entry; or*
- c) The tenant has abandoned the residential premises under Section 31.*

14. The landlord entered the residential premises for the purpose of locking the tenant out. A landlord do not have a right to lock a tenant out and in this situation where rent was late, the landlord did not have a right to terminate the tenancy without giving a proper termination notice.

15. Section 33 of the Residential Tenancies Act, 2018 states;

Seizure of Property

A landlord shall not take a tenant's personal property to compensate for a contravention of an obligation by the tenant, including a failure to pay rent.

16. In accordance with Section 33 of the Act, the landlord did not have the right to seize the tenant's property and as such the tenant is entitled to compensation to replace his personal belongs that were left in the unit after he was locked out on 7-June-2023.

17. By either removing or disposing of the tenant's personal belongings, the landlord has acted in contravention of the *Residential Tenancies Act, 2018*, and as such I am charged with the task of assessing the appropriate amount to be awarded for compensation of the tenant's personal belongings. As no receipts, estimates, advertisements or invoices were submitted to corroborate the costs the tenant is seeking to replace the items, a monetary value has to be assigned to each category of the tenant's belongings. See below amounts awarded followed by justification:

1. Furniture and electronics – \$5500.00
2. Kitchen Appliances / kitchenware – \$350.00
3. Food – \$250.00
4. Bedding / towels / toiletries -\$545.00
5. Clothing – \$2750.00
6. Natural Health Supplements / Medicine – \$200

18. With regards to the furniture and electronics (seeking \$5500.00), the tenant testified that he owned a kitchen table with chairs, chesterfield, love seat, leather accent chair (new), television (new), stereo and an expensive home gym. The tenant testified that he had a bed, night tables and lamps. Also, the tenant testified that his iPad was left in the unit. The tenant submitted random pictures that he had on his phone to show that he was the owner of the above listed items (TT#3). Research shows that the cost of furnishing a one bedroom apartment with furniture can range from \$7000 - \$11,000 (research taken from the following sites: furniturebank.org and furnishr.com). If purchasing used furniture, I would expect the cost to be cut in half ranging from \$3500 -\$5500. With all of the tenant's furniture, gym equipment and IPad missing, I find that the tenant's claim for compensation in the amount of \$5500.00 is a reasonable amount to replace those items.

19. With regards to the Kitchen appliances / kitchenware (seeking \$1050.00), the tenant testified that he had all the usual kitchenware for cooking and he owned some small appliances, such as a toaster and coffee maker, etc.. The tenant submitted random pictures that he had on his phone to show some items that he had in his kitchen, although most items were located in the cupboards (TT#3). Research shows that the cost of purchasing kitchen essentials are approximately \$328.00 which does not include the cost of the appliances (research taken from: thekitchen.com). When small appliances are added, the cost can be expected to increase by another \$265.00 for a total of \$593.00 (research taken from: canadiantire.ca). I find that the tenant's claim for compensation in the amount of \$1050.00 is not a reasonable amount to claim. I find that a reasonable cost to purchase used kitchen appliances / kitchenware to be \$350.00.

20. With regards to Food (seeking \$250.00), the tenant testified that he had food left in the fridge and freezer and can foods in the cupboards. I find it is more than reasonable to expect that a person would have at least \$250.00 worth of food in their fridge, freezer and cupboards combined. I find that the tenant's claim for compensation in the amount of \$250.00 to replace his food is an acceptable amount.

21. With regards to bedding, towels and toiletries (seeking \$750.00), the tenant testified that he had comforter, sheets, pillows, and the regular towels and face clothes used every day. The tenant testified that he had the average toiletries used by most people. I would not expect the tenant to replace those items with used product however I cannot agree that it would cost \$750.00 to replace. Research shows that an average person spends \$60.00 per month on toiletries (research taken from: www.quicken.com) and I find that it is reasonable to expect that a person would have a 3 month supply of product in their bathroom. Research shows that the cost of a standard comforter and bed sheets is \$143.00 and the cost of roughly 10 towels, 10 hand towels and 10 face clothes would cost \$222.00 (research taken from: www.walmart.ca). I find that it is reasonable to compensate the tenant for bedding, towels and toiletries in the amount of \$545.00.

22. With regards to clothing (seeking \$2750.00), the tenant testified that he had a lot of nice clothing, mostly brand name and he was left with nothing to wear not even a pair of underwear. Research shows that the cost to replace a person's wardrobe can range from \$3000 - \$5660.00 (research taken from: rueinsurance.com). I find it reasonable to compensate the tenant for the \$2750.00 he is seeking to replace his clothing.
23. With regards to natural supplements and medicine (seeking \$400.00), the tenant testified that he is seeking \$400.00 to replace what he had on stock. I am unsure as to what kinds of supplements and medicines that the tenant used, however, I accept the tenant's claim that he had to replace those items. I find that without receipts to show what he replaced, I will arbitrarily assign an amount of \$200.00 to replace those items.
24. Section 47.(1) of the *Residential Tenancies Act, 2018* outlines the sorts of remedies the Director may order on hearing an application and subsection (f) reads:

Order of director

47. (1) After hearing an application the director may make an order

...

(f) directing a landlord to deliver to a tenant possession of personal property taken in contravention of this Act or the rental agreement or to compensate a tenant for the value of the personal property taken

Decision

25. I find the tenant's claim for compensation for possessions succeeds in the amount of \$9595.00.

Issue #2: Compensation for Inconveniences \$1100.00

Relevant Submission

26. The tenant testified that he was inconvenienced when he got locked out of his unit and he is seeking \$1100.00 for lost wages and rent. The tenant submitted the following (TT#2):

Lost wages (1 day) \$200.00
Temporary living expenses (6 weeks @ \$150.00) \$900.00

Tenant's Position

27. The tenant testified that he lost a day's work on 8-June-2023, the day after he was locked out of his unit as he considered what happened to be a personal crisis. The tenant testified that he had to pay \$150.00 a week for temporary living expenses.

Analysis

28. I accept that the tenant was under undue distress as a result of being locked out of his unit and not having access to his personal belongings. It is reasonable to assume that a person in that situation would not be able to report to work the following day, however I don't know that the tenant actually had a job to attend to or what the rate of pay was. Without

supporting documentation to prove that he was employed or what his rate of pay was, I am unable to award any monies for lost wages.

29. I find the landlord is not responsible for the tenant's lost wages on 8-June-2023.
30. With regards to temporary living expenses, the tenant testified that he had to pay rent at a temporary residence for 6 weeks at \$150.00 per week while looking for a permanent residence. I asked if he was actually seeking a refund of rent, thinking that maybe he had already paid rent at his old residence and was forced to pay rent again at his temporary residence. The tenant testified that he had not paid rent at the old residence. I find that the landlord is not responsible to reimburse the tenant for the cost of rent at his new temporary residence. Tenants are responsible to pay rent wherever they live.

31. I find the landlord is not responsible for the cost of rent for the tenant's temporary residence.

Decision

32. The tenant's claim for compensation for inconveniences does not succeed.

Issue # 3: Refund of Security Deposit \$500.00

Relevant Submission

33. The landlord submitted a copy of his banking transaction to show a withdrawal of \$500.00 in support that he paid a security deposit of \$500.00 to the landlord (TT#4). The tenant also stated that he had received a receipt from the landlord showing that he paid the security deposit, however the receipt was locked in the unit with the remainder of his belongings.

Analysis

34. Section 14 of the Residential Tenancies Act, 2018 deals with security deposits, and the relevant subsections state:

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.

35. I accept the tenant's testimony that he paid a security deposit of \$500.00 to the landlord upon moving into the unit. I accept that the tenant does not have a copy of the receipt that was provided to him by the landlord because the receipt is amongst the tenant's belongings at the unit. The tenant stated at the beginning of the hearing that he moved into the unit in October 2018 but on a couple of occasions, made reference to the fact that he had lived there for the past 4 years, which brings his move-in date to 2019 which corresponds with the banking withdrawal date of September 2019. I believe that the banking transaction for 2019 is a valid date as to when the tenant paid his security deposit. I accept the submitted proof of payment (bank statement) as the date the tenant paid his security deposit in the amount of \$500.00.
36. I find that the landlord is responsible to refund the security deposit of \$500.00

Decision

37. The tenant's claim for refund of security deposit succeeds in the amount of \$500.00.

Issue # 4: Hearing Expenses \$20.00

38. The tenant paid an application fee of \$20.00 to Residential Tenancies and provided a copy of the receipt (TT#5).
39. As the tenant's claim has been partially successful, the landlord shall pay the \$20.00.

Decision

40. The tenant's claim for hearing expenses succeeds in the amount of \$20.00.

Summary of Decision

41. The landlord shall pay the tenant \$10,115.00 as follows:

a. Compensation for possessions as follows:

| | |
|--|-----------|
| i. Furniture and electronics | \$5500.00 |
| ii. Kitchen appliances / kitchenware | 350.00 |
| iii. Food..... | 250.00 |
| iv. Bedding/towels/toiletries | 545.00 |
| v. Clothing..... | 2750.00 |
| vi. Natural supplements / medicine | 200.00 |

b. Refund of security deposit \$500.00

c. Hearing expenses \$20.00

Total \$10,115.00

October 10, 2023

Date

Pamela Pennell
Residential Tenancies Office