

## Residential Tenancies Tribunal

Application 2023-0788-NL

Decision 2023-0788-NL

Michael Reddy  
Adjudicator

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### Introduction

1. The hearing was called at 1:47 PM on 19 October 2023 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the tenant", attended the hearing.
3. The respondent, [REDACTED], hereinafter referred to as "the landlord", attended the hearing.
4. The details of the claims were presented as an oral monthly rental agreement with rent set at \$600.00 (heat, lights, and cable included) and due on the 1<sup>st</sup> of each month. There was no security deposit collected on this tenancy. The tenant moved into the rental unit located at [REDACTED], in February 2023 and remained in the property until on or about 15 September 2023.
5. The tenant provided the landlord an application for dispute resolution (**Exhibit T # 1**) seeking to be reimbursed for September 2023 rental payment following a situation when he attended the property and could not gain entry.
6. 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.

### Preliminary Matters

7. The tenant did not amend his application at the hearing.
8. The tenant offered testimony during the hearing and did not call any witnesses. The landlord offered verbal testimony during the hearing and did not call any witnesses.

## **Issues before the Tribunal**

9. The tenant is seeking the following:

- An order for refund of rent in the amount of \$600.00; &
- An order for payment of hearing expense of \$20.00.

## **Legislation and Policy**

10. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act*, 2018
11. Also relevant and considered in this case is S. 10, 34 and 35 of the *Residential Tenancies Act*, 2018.

### **Issue 1: Rent Refund- \$600.00**

#### Landlord position

12. The landlord stated that there is a verbal monthly rental agreement established with the tenant, who has occupied the rental premises since February 2023, with rent being due the first of each month in the amount of \$600.00.
13. The landlord testified the tenant was a boarder at [REDACTED] [REDACTED] and that he was renting a room at that residence. The landlord denied having rental receipts and stated her practice was not to issue receipts to tenants for rental payments as, "There were no receipts given because he was just a boarder".
14. The landlord stated that in August 2023, she was aware the tenant was in another part of the province for a brief period, due to personal reasons, with intentions of returning to his rental unit. The landlord indicated the tenant had paid rent for both August and September 2023.
15. The landlord stated in September 2023, she changed the lock of the room the tenant occupied.

#### Tenant position

16. The tenant stated in August 2023, he travelled to another part of the province for personal reasons which he described as, "for two weeks". Upon return to his rental, he attempted to enter [REDACTED] at which time the lock had been changed and he was unable to gain entry in the rental property.
17. The tenant testified he had requested rental receipts from the landlord for both August 2023 and September 2023 rental payments, which she never provided.

18. The tenant suggested following his inability to get into the rental property, he did experience situations when he slept in his vehicle and he wished to be reimbursed \$600.00 for rent for September 2023.
19. On the date of the hearing (19 October 2023), the tenant stated he was living in █  
██████████.

## Analysis

20. The verbal agreement with the landlord establishes the landlord tenant relationship. The parties had an agreement that the tenant would take possession of the room in February 2023 and the tenant had paid rent for the use and enjoyment of the property, as per section 9 of the *Residential Tenancies Act, 2018*, below:

### Landlord and tenant relationship

**9.(1) A relationship of landlord and tenant takes effect when the tenant is entitled to use or occupy the residential premises whether or not the tenant actually uses or occupies it.**

**(2) The doctrine of frustration of contract and the Frustrated Contracts Act apply to a rental agreement.**

**(3) A common law rule respecting the effect of the **contravention of a material covenant by a party to a contract on the obligation to perform by the other party applies to a rental agreement.****

**(4) Where a relationship of landlord and tenant exists, a covenant concerning a thing related to the residential premises is considered to rune with the land whether or not the thing is in existence at the time the relationship commenced.**

21. The landlord testified she changed the lock on the entry at ██████████ ██████████. I find the landlord action is in contravention of 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 an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:**

...

**6. Entry Doors- Except by mutual consent, neither **the landlord** nor the tenant **shall**, during the use of occupancy of the residential premises by the tenant, alter a lock or locking system on a door that fives entry to the residential premises.**

**7. Peaceful Enjoyment and Reasonable Privacy-**

*(a) The tenant shall not unreasonably interfere with the rights and reasonable privacy of a landlord or other tenants in the residential premises, a common area or the property of which they form a part.*

*(b) The landlord shall not unreasonably interfere with the tenant's reasonable privacy and peaceful enjoyment of the residential premises, a common area of the property of which they form a part.*

22. The landlord testified during the hearing three issues which require consideration. She acknowledged the tenant paid rent for September 2023, that she was aware the tenant would be away for a period from the rental property with intentions of returning, and that she changed the lock on the rental unit. I find the landlord owes to the tenant a rebate of rent in the amount of \$600.00 for September 2023.

**Decision**

23. The tenant's claim for a rebate of rent succeeds in the amount of **\$600.00**.

**Issue 2: Hearing Expenses- \$20.00**

24. The tenant paid an application fee of \$20.00 (**Exhibit L # 2**).

**Decision**

25. As the tenant's claim has been successful, the landlord shall pay his hearing expense of \$20.00 for the costs of filing this application.

**Summary of Decision**

26. The tenant is entitled to the following:

- A payment of **\$620.00**, as determined as follows:

|                         |                        |
|-------------------------|------------------------|
| a) Rebate of Rent.....  | \$600.00               |
| b) Hearing expense..... | \$20.00                |
| c) Total.....           | <b><u>\$620.00</u></b> |

1 November 2023

Date

