

Residential Tenancies Tribunal

Application 2023-0963-NL
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Decision 23-0963-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:46 p.m. on 14-December-2023.
2. The applicant, [REDACTED] hereinafter referred to as "the tenant" attended by teleconference.
3. The respondent and counter applicant, [REDACTED] represented by [REDACTED] hereinafter referred to as "the landlord" attended by teleconference.
4. The tenant submitted an affidavit stating that he served the landlord with the notice of hearing electronically by sending it to [REDACTED] on 2-December-2023 (TT#1). The landlord confirmed receiving the document on that date. The landlord countered the claim and submitted an affidavit stating that he served the tenant electronically by sending it to [REDACTED] on 10-November-2023 (LL#1). The tenant confirmed receiving the document on that date. In accordance with the *Residential Tenancies Act, 2018* this is good service.

Preliminary Matters

5. There was a written term agreement that commenced on 1-September-2023. The tenant vacated the premises on 28-September-2023. Rent was \$950.00 per month due on the first of each month. A security deposit of \$712.50 was paid on 24-August-2023 and is in the landlord's possession.
6. The tenant's application is amended to omit *Compensation paid for inconvenience* in the amount of \$68.00 and *premises vacated*.

Issues before the Tribunal

7. The tenant is seeking:
 - Validity of termination notice
 - Refund of security deposit \$712.50
 - Hearing expenses \$20.00

8. The landlord is seeking:
 - Rent paid \$950.00
 - Security deposit applied against monies owed \$712.50
 - Hearing expenses \$20.00

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
10. Also, relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 14; Security Deposit and Section 18 (5); Notice of termination of rental agreement. Also, relevant and considered are the following section of the *Residential Tenancies Policy Manual*: Section 7-6; Premises Uninhabitable and Section 12-1: Fees.

Item # 1: Validity of Termination Notice

Relevant Submission

11. The tenant submitted a copy of a termination notice that was issued to the landlord on 28-September-2023 to vacate the premises on 30-September-2023 under Section 21; Notice where premises uninhabitable (TT#2).

Tenant's Position

12. The tenant testified that the unit was uninhabitable due to black mold which became apparent on 18-September-2023. The tenant stated that he became sick at the time and remained sick for a week. The tenant stated that he was forced to vacate the unit for health reasons and the tenant submitted photographs of the mold to support this claim (TT#3).

Landlord's Position

13. The landlord testified that there was never a problem with mold in the unit and he disputes that the unit was uninhabitable. The landlord stated that the tenant vacated without proper notice and questions the validity of the termination notice.

Analysis

14. *Residential Tenancies Policy* 7-6 states:

A rental premises may be considered uninhabitable when any of the following occurs:

- The landlord has not complied with laws respecting health, safety or housing applicable to the rental premises;
- An authoritative body (i.e. City or local Town Council) orders that the premises be shut down for safety reasons.

15. Where a landlord's compliance with laws regarding housing, health or safety conditions are questionable, the tenant must contact the responsible authority (ie. municipal building inspector or Dept. of Health). **If the unit is declared uninhabitable by a regulatory**

authority, the tenant may give notice to the landlord that the rental agreement is terminated, and the tenant is vacating the rental premises immediately.

16. The tenant has not shown that a regulatory authority was contacted in relation to the issues with the mold in the rental unit. It is not under the scope of this tribunal to deem the property uninhabitable due to any violations. And as such, I find that the property is not uninhabitable.

Decision

17. The termination notice issued under Section 21; Notice where premises uninhabitable is not a valid notice.

Item # 2: Rent paid \$950.00

Landlord's Position

18. The landlord testified that the tenant vacated the unit without proper notice, and he is seeking rent for the month of October 2023. The landlord testified that a new tenant was secured for the month of November which left him with a loss of rent for 1 month.

Tenant's Position

19. The tenant testified that the unit was uninhabitable due to black mold, and he vacated the unit due to health reasons. The tenant stated that the mold became visible on 18-September-2023 at which time he became sick and decided that he could not reside at the unit any longer. The tenant stated that he gave a termination notice under Section 21; Notice where premises uninhabitable and the tenant testified that when he contacted the landlord regarding the mold issue, the landlord agreed to end the tenancy. The tenant submitted a copy of electronic messages to show that both parties mutually agreed to discontinue the tenancy (TT#3). The tenant stated that the landlord agreed to end the tenancy with no penalty, and he should not have to pay rent for the month of October 2023.

Analysis

20. Based on the findings in paragraph 17 above, the termination notice under section 21 of the *Act* was deemed invalid, however if a landlord and tenant agree to mutually terminate a rental agreement then a notice of termination is not required. Section 18(5) of the *Residential Tenancies Act, 2018*, states:

Notice of termination of rental agreement

18. (5) Notwithstanding subsections (1) to (3), a notice of termination is not required to be given where a landlord and a tenant agree in writing to terminate the rental agreement on a specific date.

21. The discontinuation agreement was a valid agreement via text messaging between the tenant and landlord. Case law supports the recognition of agreements made via digital means such as text messaging. In this instance, the text message was written in clear unequivocal language, with a clear, confirmed response by the landlord.

22. As a discontinuation agreement was in place, I find that the tenant is not responsible for rent for the month of October 2023.

Decision

23. The landlord's claim for rent does not succeed.

Item # 3: Hearing Expenses \$20.00

24. Both the landlord and the tenant are seeking reimbursement of their respective hearing expenses. They both paid an application fee of \$20.00 to *Residential Tenancies*.
25. In accordance with Section 12-1 of the *Residential Tenancies Policy Manual: Fees*, if an award does not exceed the amount of the security deposit, hearing expenses related to the filing fee will not be awarded. As there isn't any monetary amount being awarded that exceeds the security deposit, the filing fees will not be awarded.
26. I find that both parties are responsible for their own hearing expenses.

Decision

27. The landlord's claim for hearing expenses does not succeed.
28. The tenants claim for hearing expenses does not succeed.

Item # 4: Security Deposit \$712.50

Tenant's Position

29. The tenant is seeking a refund of security deposit in the amount of \$712.50.

Landlord's Position

30. The landlord is seeking to have the security deposit applied against monies owed.

Analysis

31. 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.

32. I find that as the landlord has not been successful in his claim for rent and hearing expenses (see paragraphs 23 & 27), the security deposit shall be refunded to the tenant.


Decision

33. The tenant's claim to have the security deposit refunded succeeds.

Summary of Decision

34. The landlord shall refund the security deposit to the tenant in the amount of \$712.50.

January 10, 2024
Date



Pamela Pennell
Residential Tenancies Office