

Residential Tenancies Tribunal

Application 2023-1024-NL

Decision 23-1024-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 1:55 p.m. on 11-December-2023.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
4. The tenant submitted an authorized representative form (TT#02) naming [REDACTED], as his representative, he attended by teleconference.

Preliminary Matters

5. The tenant submitted an affidavit (TT#01) stating he served the landlord with notice of hearing electronically by email ([REDACTED]) on 22-November-2023. The landlord confirmed she received notice by email, she did proclaim that she was not given adequate time to prepare for the hearing, however Rule 29.05(2)(a) states respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing, the notice provided by the applicant meets the time frame.
6. There was a previous order for these two parties (2023-0407-NL). The outcome of the previous decision determined the landlord’s claim for vacant possession and damages failed.
7. During the previous hearing it was determined that the tenant rented the unit before the landlord purchased the property. 01-July-2022 they signed a term lease until 31-August-2023. The tenant paid \$850.00 a month for rent which was due on the first day of each month.

Issues before the Tribunal

8. The tenant is seeking:
 - Rent reimbursed \$850.00
 - Hearing expenses

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 is the following section of the *Residential Tenancies Act, 2018*: Section 18: Notice of termination of rental agreement.

Issue 1: Rent reimbursed \$850.00

Tenant's Position

11. The tenant was unable to recall the complete details of the rental agreement (TT#03). His submitted copy confirms the details outlined in paragraph 7. The tenant acknowledged that the agreement stated that he paid a security deposit of \$475.00 but he believes he paid \$575.00.
12. The authorized representative confirms that the tenant has not received his security deposit back even though the landlord lost her previous decision (2023-0407-NL) seeking the deposit be retained.
13. The tenant said that the landlord gave him several termination notices. His authorized representative stated that the landlord gave him notice of a termination for 14-August-2023. The tenant stated he moved out on 16-August-2023.
14. The authorized representative explained that a rent payment was mistakenly made for 01-September-2023 rent. They are seeking the return of this rent.
15. The authorized representative said that the tenant's daughter sent a text the first week of September requesting the rent be returned and confirming the tenant moved out.

Landlord's Position

16. The landlord could only confirm that there was a rental agreement and currently it is expired. She was completely focused on her previous decision and unable to contribute appropriately to the matter at hand.
17. The landlord said that she was desperate for the tenant to move out. However, neither he nor his support people told her he was gone. She said 01-September-2023 the tenant's daughter contacted her requesting the rent be returned and at that time she asked if the tenant had moved, and the daughter confirmed he had.

18. The landlord then asked for the keys. The daughter informed her that she would return the keys on the following Tuesday. She declared she never received the keys back and had new ones made.
19. She said she advertised for a new tenant right away and did move another renter in 01-October-2023. She doesn't understand why they never gave her notice.

Analysis

20. Both parties agreed that rent was paid for September 2023 and no notice was given that the tenant was moving. At the time of the tenant's move the landlord had served the tenant with several invalid notices (2023-0407-NL). One of the notices did have a termination date of 14-August-2023, however the tenant did not move on that date. The tenant moved on 16-August-2023.
21. The tenant could have moved on 14-August-2023, and ended the tenancy as requested by the landlord; he did not do this. If the tenant did not end the agreement as demanded by the landlord, the tenant then is making the determination of when the tenancy will end and must give notice.
22. The requirement for a tenant to terminate a tenancy of a fixed term agreement is the tenant is to give notice before the last two months of the rental agreement. This was not done, and a landlord is entitled to a proper notice of termination under the legislation. As per Section 18 of the *Residential Tenancies Act, 2018*, below:

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.

23. However, if both parties agree to the termination of a rental agreement this option is provided in 18(5), as follows:

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.

24. The testimony of both parties indicates that had the tenant provided any notice, the landlord would have been eager to accept the termination of the agreement. However,

the tenant did not provide notice and therefore caused the landlord to lose rental income. The landlord's testimony shows that she attempted to mitigate this loss by immediately advertising the rental and securing a tenant for 01-October-2023.

25. The tenant failed to meet his obligation and the landlord is therefore entitled to retain rent for 01-September-2023. I find that the tenant's claim for rent reimbursed fails.

Decision

26. The tenant's claim for rent reimbursed fails.

Issue 2: Hearing expenses reimbursed \$20.00

27. The tenant submitted the receipt for \$20.00 for the cost of the hearing (TT#05) and pursuant to policy 12.01, as his claim was unsuccessful, he is not entitled to reimbursement of that cost from the landlord.

Summary of Decision

28. The tenant's claim for rent reimbursed fails.

December 21, 2023

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office