

Residential Tenancies Tribunal

Application 2024-0147-NL

Decision 24-0147-00

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 14-March-2024 at 1:46 pm.
2. The applicant, [REDACTED] hereinafter referred to as the landlord, appeared via teleconference.
3. The respondent, [REDACTED] hereinafter referred to as the tenant, also appeared via teleconference.

Issues before the Tribunal

4. Should the landlord's claim for rent be granted?

Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).

Issue 1: Unpaid Rent

Landlord's Position

6. The landlord claims for \$390 in rent for the second half of the month of January. She says, and the tenant agreed, that their rental agreement was that the tenant would pay rent biweekly and in advance for the following month, with the full amount to be paid by the 25th of each month. The rental agreement, LL#1 was offered in support of this. The landlord testified that she issued a termination notice for 12-January-2024 when the tenant failed to provide the second half of January's rent by 25-December-2023.

Tenant's Position

7. The tenant submits that the tenancy ended on the 12-January-2024 and he paid the rent for those first two weeks. He submits that he does not owe rent for the weeks in which he did not have possession of the premises.

Analysis

8. Generally, a tenant only owes rent for the period of time during which they have possession of the property. There are exceptions to this. For instance, if a tenant's failure to comply with the terms of the rental agreement deprives the landlord of the effective use of the premises, the tenant may be liable for rent for that period of deprival. Also, where a tenant gives the landlord inadequate notice, and the landlord is subsequently unable to mitigate the loss by re-renting the apartment in a timely manner, the tenant may be liable for rent in lieu of proper notice. Neither circumstance is present here.
9. The landlord was candid about the fact that her motivation in bringing this claim was partially due to a previous decision by this tribunal. The tenant had submitted a claim for the return of the \$390 security deposit, which was application 2024-0087-NL. As the landlord did not submit a counterclaim within the required timeline, an order without hearing was issued for the return of the deposit. The landlord testified that she had been out of the province and did have a claim for damages but was unable to submit it in time.
10. The fact that the landlord faced procedural barriers in filing a counterclaim for damages is irrelevant to the issue of whether or not the tenant owes unpaid rent. The fact that rent was paid biweekly and in advance is also irrelevant to the issue. Based on the agreed upon facts, the tenant has paid for the entire period of time for which he had possession. There was no evidence submitted that they left the apartment in an unusable state.
11. It is worth noting that the landlord is not prohibited from bringing a claim for damages should she choose to do so. Missing the 10-day deadline under s. 14(11) to respond to the tenant's claim for the return of the security deposit only prevents the landlord from claiming against the security deposit specifically. It does not affect the limitation period for claiming for damages in general.

Decision

12. The landlord's claim for rent fails.

10-April-2024

Date

Seren Cahill
Residential Tenancies Office