

Residential Tenancies Tribunal

[REDACTED] Decision 20-0023-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:05 pm on 23 June 2020 via teleconference.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as "landlord1" and "landlord2", respectively, participated in the hearing. The respondent, [REDACTED], hereinafter referred to as "the tenant", also participated.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for a return of missing possessions valued at \$500.00;
 - An order for a payment of rent in the amount of \$4000.00;
 - An order for compensation for damages in the amount of \$550.00; and
 - An order for a payment of other expenses in the amount of \$300.00.

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this case is section 32 of the *Residential Tenancies Act, 2018*.

Issue 1: Damages - \$550.00

Relevant Submissions

6. The landlords and the tenant entered into a 1-year, fixed-term rental agreement on 01 July 2019 and a copy of the executed rental agreement was submitted with the landlords' application. The agreed rent was set at \$1500.00 and the tenant had paid a security deposit of \$400.00.
7. Landlord1 stated that the tenants fell into rental arrears in November 2019 and on 14 November 2019 she issued the tenants a termination notice. That notice had an effective termination date of 26 November 2019. The landlords took possession of the property on 29 November 2019 after posting a Notice of Abandonment and the locks were changed on that date.
8. Although the landlords had taken possession of the property on 29 November 2019, they complained that the tenant did not have all of her possessions removed from the property until 14 January 2020.
9. Landlord2 stated that the tenants were provided with a barbecue and a patio set when the tenancy began. He complained that they did not store those items in the shed when winter started and as a result of "snowmageddon" (a major storm which took place on 17 January 2020), they were buried in 7 feet of snow and became damaged.
10. Landlord2 stated that the glass table top was broken because of the weight of the snow and he claimed that the barbecue and the chairs and table had suffered significant rust damage. No photographs were submitted at the hearing.
11. Landlord2 is seeking \$150.00 for the costs of replacing the barbecue and \$400.00 for the costs of the patio set. These items have not been replaced and no receipts or estimates were submitted at the hearing.

Analysis

12. I find that this portion of the landlords' claim does not succeed.
13. Firstly, there was no evidence presented at the hearing establishing that the barbecue or patio set were damaged, or, if they were damaged, establishing the extent of that damage. There was also no evidence presented establishing that it would cost \$550.00 to replace these items.
14. Secondly, the tenancy ended on 29 November 2019 and the landlords were in possession of the property, including the patio furniture and barbecue, after that date. The landlords had ample time between 29 November 2019 and 17 January 2020 to collect those items and store them in the shed.
15. Landlord2 did argue that the tenancy technically did not end until 14 January 2020 as the tenants had left their possessions at the property until that date, but even so, that was still 3 days before "snowmageddon".

Decision

16. The landlords' claim for compensation for damages does not succeed.

Issue 2: Missing Possessions - \$500.00

Relevant Submissions

The Landlords' Position

17. Landlord2 stated that the tenant was provided with numerous beds when she moved in, but he claimed that after she had removed all of her possessions from the property, he discovered that she had taken a bed frame, a headboard and a box spring.
18. The landlords are seeking \$500.00 for the costs of replacing those items. Those items have not been replaced and no receipts or estimates were submitted at the hearing.

The Tenants' Position

19. The tenant stated that she had not removed those items from the rental unit.
20. The tenant did say, though, that she was willing to pay to the landlords the costs they are seeking here.

Analysis and Decision

21. As the tenant agreed to pay the landlords the costs they are seeking here, their claim succeeds in the amount of \$500.00.

Issue 3: Other Expenses - \$300.00

Relevant Submissions

The Landlords' Position

22. Landlord2 stated that the tenant had left behind 2 dressers at the unit after she vacated as well as a chest freezer.
23. Landlord2 stated that he had to get a pick-up truck and drive it to [REDACTED] from [REDACTED] (on their application, the landlord's list their hometown as [REDACTED]) and then arrange for a friend of his to help him remove those items from the rental unit and then take them to the dump.

24. He is seeking \$300.00 in compensation for the costs of driving into [REDACTED] to dispose of those items.

The Tenant's Position

25. The tenant stated that she had only left 1 dresser behind at the unit, not 2.

Analysis

26. I accept landlord2's claim that he had to make a trip to the dump to dispose of some items left at the unit by the tenant. However, I was not persuaded that the landlords are entitled to \$300.00 in compensation for that trip.

27. First of all, the tenant claimed that she had only left behind 1 dresser at the unit and there was no evidence submitted at the hearing (e.g., photographs) to corroborate the landlords' claim that 2 were left behind.

28. Secondly, although I agree that the landlords had incurred additional costs as they drove to the rental unit from [REDACTED], I don't believe that the tenant can be held responsible for the landlords' decision to live so far away from their place of business.

29. With these points in mind, I find that the landlords are entitled to \$100.00 in compensation for the costs of removing and disposing of a dresser and a freezer.

Decision

30. The landlords' claim for the costs of making 1 dump run succeeds in the amount of \$100.00.

Issue 4: Rent - \$4000.00

Relevant Submissions

31. Landlord2 stated that the tenant had only paid \$500.00 in rent for November 2019 and the landlords are seeking an order for a payment of the remaining \$1000.00 owing for that month.

32. Although the locks to the unit were changed on 29 November 2019 and the landlords had possession of the property after that date, the landlords are also seeking rent for December 2019 and January 2020 as the tenant did not collect her possessions from the property until 14 January 2020. The landlords are seeking a payment of \$1500.00 for each of those 2 months.

Analysis

33. With respect to the rent that is owing for November 2019, I accept landlord2's claim that they had only received \$500.00 for that month and that the tenant owes them the remaining \$1000.00. As such, their claim for rent for November 2019 succeeds in that amount.
34. However, I was not persuaded that the landlords are entitled to the \$3000.00 they are seeking for December 2019 and January 2020.
35. Section 34 of the *Residential Tenancies Act, 2018* deals with the issue of abandoned personal property, and the relevant subsections state:

Abandoned personal property

32. (1) Where a tenant abandons or vacates a residential premises and leaves personal property on the residential premises, the landlord shall either

- (a) remove the personal property and immediately place it in safe storage; or***
- (b) store the personal property on the residential premises in a safe manner.***

(2) The personal property stored under subsection (1) shall be stored for not less than 30 days unless the tenant takes possession of the personal property before the 30 days have elapsed.

...

(6) The tenant or owner of the personal property may, within the 30 day period referred to in subsection (2), claim and take possession of the personal property by paying the landlord the costs reasonably incurred by the landlord to remove and store the property.

(7) Where a landlord stores personal property on the residential premises in accordance with subsection (1), the storage costs referenced in subsection (6) shall be the lesser of the standard rate charged by public storage facilities or the rental rate of the residential premises.

36. After the landlords took possession of the unit on 29 November 2019, they elected to leave the tenant's abandoned personal property in the rented unit, instead of immediately placing it in safe storage. As such, the landlords are entitled, as per section 32.(7), to the lesser of the monthly rate of rent or the costs of renting a storage locker for 30 days.

37. The landlords presented no evidence at the hearing establishing storage costs at a public storage facility. I conducted a brief search online and at U-Haul in [REDACTED], a storage locker suitable for a 1 to 2 bedroom apartment can be rented for \$105.99 per month [REDACTED] [REDACTED]. As that rate is less than the rental rate of \$1500.00 charged by the landlords, I find that their claim for the costs of storing the tenant's possessions succeeds in the amount of \$105.99.

Decision

38. The landlords' claim for rent and storage fees succeeds in the amount of \$1105.99 (\$1000.00 owing in rent for November 2019 and \$105.99 for the costs of storing the tenant's possessions for 30 days).

Issue 5: Security Deposit

39. The landlords stated that the tenant had paid a security deposit of \$400.00. As the landlords' claim has been successful, they shall retain that security deposit as outlined in this decision and attached order.

Summary of Decision

40. The landlords are entitled to the following:

a) Missing Possessions	\$500.00
b) Disposal of Items	\$100.00
c) Rent and Storage Costs.....	\$1105.99
d) LESS: Security Deposit	
(\$400.00)	
Total Owing to Landlord.....	<u>\$1305.99</u>

14 July 2020

Date

John R. Cook
Residential Tenancies Tribunal