

Residential Tenancies Tribunal

[REDACTED] Decision 20-0051-01

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:04 am on 08 December 2020 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the tenant", participated in the hearing.
3. The respondent, [REDACTED], was represented at the hearing by [REDACTED] and [REDACTED], hereinafter referred to as "landlord1" and landlord2", respectively.

Issues before the Tribunal

4. The tenant is seeking the following:
 - An order for compensation for inconvenience in the amount of \$1250.00; and
 - An order for a return of missing possessions valued at \$1275.00.

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*.
6. Also relevant and considered in this case is section 33 of the *Residential Tenancies Act, 2018*.

Issue 1: Missing Possessions - \$254.92

Relevant Submissions

The Tenant's Position

7. The tenant stated that he had moved into the rental unit in September 2001. The current rent is set at \$600.00 per month. The tenant's apartment is a 2-bedroom unit located in a complex with 4 other apartments.
8. The tenant stated that all of his hand tools and power tools are locked in the landlord's shed and he no longer has access to them. He claimed that these tools had been seized by the landlord and he testified that he had received a letter stating that if he attempted to enter the shed he would be deemed to be trespassing. That letter was not submitted with his application.
9. Through this application he is seeking compensation in the amount of \$3.00 for each day he has been without his tools. The tenant stated that when filed his application, he had been without his tools for 425 days, and he calculated that he was therefore entitled to a payment of \$1275.00. He is also seeking additional compensation for the period from when the application was filed to the hearing date.

The Landlord's Position

10. Landlord1 stated that in the past he had hired the tenant to carry out some maintenance work at the complex for him. He testified that he had given the tenant permission to store his tools in the shed and that those tools have now been there for about 13 years.
11. Landlord1 stated that a few years ago they had installed new locks on that shed but he denied that he had refused the tenant access to the shed or his tools. He also denied that he had sent him the letter described by the tenant in paragraph 8, above.
12. Landlord1 stated that the first time he became aware that the tenant wanted to access the shed was when he received the tenant's application. He testified that he then reached out to the tenant and offered him access to the shed so that he could remove his tools. He stated that the tenant refused and the tools are still there. He denied that he had refused to release the tools to the tenant and claimed that he is free to retrieve them whenever he pleases.

Analysis

13. Section 33 of the *Residential Tenancies Act, 2018* states:

Seizure of property

33. A landlord shall not take a tenant's personal property to compensate for a contravention of an obligation by the tenant, including a failure to pay rent.

and section 47.(1)(f) states:

Order of director

47. (1) After hearing an application the director may make an order

...

(f) directing a landlord to deliver to a tenant possession of personal property taken in contravention of this Act or the rental agreement or to compensate a tenant for the value of the personal property taken;

14. I agree with the tenant that without a key to the shed he does not have free and easy access to the tools which are stored there. But the tenant presented no evidence at the hearing to establish that the landlord had seized his tools and no evidence to establish that he had even attempted to retrieve those tools or that he had made any requests of the landlord to gain access to the shed prior to August 2020.
15. It was the landlord's position that they were merely allowing the tenant to store his tools in the shed. I accept that testimony and I also accept their claim that, with reasonable notice, they will allow him access to the shed to remove his tools.
16. As there was no evidence presented to establish that the tenant's tools were seized in contravention of the *Residential Tenancies Act, 2018* or in contravention of their rental agreement, his claim does not succeed.

Decision

17. The tenant's claim for an order for a payment in compensation for missing possessions does not succeed.

Issue 2: Compensation for Inconvenience - \$1250.00

Relevant Submissions

The Tenant's Position

18. The tenant also complained that for the past 10 years, during the winter, the occupant in the ground floor apartment would have parties in his apartment every weekend. He stated that these parties were very loud, with lots of noise and singing, and they would sometimes run to 5:30 am.
19. The tenant testified that he had raised this issue with the landlord on several occasions, the most recent complaint being made sometime last year.
20. Because of the issue of the noise and the parties, the tenant is seeking compensation in the amount of \$125.00 per year for the past 10 years, for a total claim of \$1250.00.

The Landlord's Position

21. Landlord1 stated that he has never received a formal complaint from the tenant, and with regards to any informal complaints, he stated that he last received a call from the tenant over a year ago. Like his claim for missing possessions, landlord1 stated that he only learned that the tenant was recently having issues when he received his application in August 2020.
22. Landlord1 stated that he had been trying to address any issues raised by the tenant and he testified that after he had received his complaint last year, he had spoken to the resident in the downstairs apartment. Since then he has received no complaints from the tenant and he testified that none of the other residents at the complex have been complaining either.
23. He also argued that things cannot be so bad at the complex as the tenant has continued to reside there for the past 19 years.

Analysis

24. I was not persuaded by this portion of the tenant's claim, either.
25. As the tenant had last made a complaint about the noise and partying over a year ago, and as no other complaints have been received since, I find that the landlord had reasonably assumed that the matter had been resolved after speaking with the downstairs resident. I agree with the landlord that he cannot be held responsible for any noise or other inconveniences suffered by the tenant if the tenant has not made a reasonable effort to notify the landlord about those issues.

Decision

26. The tenant's claim for compensation for inconvenience does not succeed.

Issue 3: Overpaid Rent

Relevant Submissions

The Tenant's Position

27. Although this matter was not listed on his application, the tenant claimed that he had also been paying too much rent to the landlord.
28. He submitted a Client Aged Detail with his application and pointed to 11 transactions from 2016 showing that the landlord has recorded that had paid the then required monthly rent \$475.00. But he also submitted receipts for those transactions showing that he had in fact paid \$525.00, \$50.00 more than he was credited with
29. The tenant also alleged that in 2015 there were several occasions where he had paid his rent and then he had repaid it a second time.

The Landlord's Position

30. Landlord1 stated that prior to 2016 the tenant had fallen into rental arrears and they had agreed to let him pay off those arrears by paying \$50.00, per month, in addition to his rent. He stated that they recorded the rent of \$475.00 in their ledger as being paid, while the additional \$50.00, though not recorded, was used to pay down the accumulated arrears.
31. Landlord1 denied that the tenant had paid any additional rent to him. He also pointed out that the tenant has failed to pay his rent for September, October, November and December 2020. That claim was acknowledged by the tenant.

Analysis

32. The tenant is right that there is a discrepancy of \$50.00 between those 11 rent payments recorded in the ledger and the receipts he was issued. The most probable explanation for those payments, though, was that provided by the landlord—the tenant was paying off rental arrears which had built up.
33. I was not convinced that the tenant had paid double rent in 2015 and there was insufficient evidence presented at the hearing to establish that claim.

34. Given that the tenant has not paid his rent for the period from September to December 2020, it seems more probable to me that the tenant owes the landlord money, not the other way round.

Decision

35. The tenant's claim for a rebate of rent does not succeed.

Summary of Decision

36. The tenant's claim for an order for a return of missing possession, compensation for inconvenience and a rebate of rent does not succeed.

18 March 2021

Date

[Redacted]
John R. Cook
Residential Tenancies Tribunal