

Residential Tenancies Tribunal

Decision 20-0292-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:11 am on 13 October 2020 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the tenant", participated in the hearing. The respondent, [REDACTED], was represented at the hearing by [REDACTED], hereinafter referred to as "the landlord".

Issues before the Tribunal

3. The tenant is seeking the following:
 - An order for a refund of the security deposit in the amount of \$1162.50,
 - An order for a refund of rent in the amount of \$2000.00, and
 - An order for a payment of \$350.00 in compensation for inconvenience.
4. The landlord is seeking the following:
 - An order for a payment of rent in the amount of \$2600.00
 - An order for a payment of late fees in the amount of \$75.00, and
 - Authorization to retain the security deposit.

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 16 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

7. The landlord amended her application at the hearing and removed her claim for late fees.

Issue 1: Refund of Rent - \$2000.00

Relevant Submissions

The Tenant's Position

8. The tenant and landlord entered into a 6-month, fixed-term rental agreement on 01 March 2020 and a copy of the executed lease was submitted with the tenant's application. The agreed rent was set at \$1550.00 per month and it is acknowledged in the lease that the tenant had paid a security deposit of \$1162.50.
9. The tenant issued the landlord a termination notice on 18 June 2020 and she vacated on 01 July 2020.
10. The tenant stated that although the unit was a fully furnished apartment, the homeowner had left behind a large amount of her personal items in the unit as well. She stated that there were numerous boxes left in the unit containing clothing, shoes, purses, etc., and many of the closets and dressers were also filled with clothing. She also claimed that personal items were left in the side tables, on the shelves, in the desk drawers and in the cupboards in the bathroom and kitchen.
11. The tenant stated that she had initially agreed with the landlord and the homeowner that she would transfer the clothing, boxes and other personal items to a storage area located in the complex, but she complained that she had not been given a key to that area. She claimed that in the first week of March 2020 she had requested that she be provided with a key but she was informed by the landlord that the homeowner's brother had the key and that he was currently out of town.
12. In order to avail of the dressers, cupboards, closets, etc. that were included in her rent, the tenant collected the homeowner's clothing, the various boxes and her personal items, and stored them in the second bedroom.
13. The tenant complained that she had to move all of the homeowner's items herself without any assistance from the landlord and she also complained that the landlord had not provided her with a key to the storage area, as promised. As such, the tenant was without the use of the second bedroom during her tenancy as it was used to store the homeowner's belongings and she also stated that she did not have the use of the dressers in the master bedroom or the

closets. She argued that as rent she was paying was for use and enjoyment of a 2-bedroom apartment, with additional storage, she is entitled to a rebate of rent based on the fact that she only had partial use of 1 bedroom and that she was not granted access to the storage area. She argued that, based on the square footage of the apartment, she is entitled to a rebate of \$500.00 per month for a total claim of \$2000.00 (\$500.00 per month for the period from 01 March to 01 July 2020).

The Landlord's Position

14. The landlord acknowledged that some of the homeowner's possessions were left behind at the unit when the tenant moved in, but she pointed out that the tenant was ok with those items being left behind and had offered to move them for the homeowner.
15. The landlord also claimed that the rental agreement that the tenant had entered into with her did not include access to the storage unit in the complex. She did acknowledge that she had told the tenant that the homeowner's brother did have a key to the storage area and that he would allow her access when he returned to the province. However, because of the onset of the COVID-19 pandemic, the homeowner's brother was not able to get back to the province until mid-June 2020. But the landlord stated after he had returned, the tenant rebuffed her offer of the key for the storage area at that time and stated that she would be moving on 01 July 2020.
16. With respect to the tenant's claim for compensation, although the landlord did acknowledge that the homeowner had left behind some of her personal possessions at the unit, she argued that this was something that the tenant ought to have addressed when she first moved into the unit. But the landlord claimed at the hearing that she did not receive a request for a key to the storage area until mid-May 2020. The landlord also argued that the personal possession left behind by the homeowner would only have taken up a small portion of the space in that second bedroom and the tenant would have still have been able to use that room.

Analysis

17. I accept the tenant's assertion that the homeowner had left behind a significant amount of her personal belongings at the rental unit. The failure of the homeowner to remove these items meant that the tenant did not have full access to all of the dressers, cupboards and closets that she had agreed to rent and I accept the tenant's claim that she also did not have use of the second bedroom, as it was also used to store the remainder of the homeowner's possessions.

18. Regarding the storage area, I find that there was not enough evidence presented by the tenant to establish that her lease included the provision of any additional storage area at the complex and there was also insufficient evidence presented to establish that she had been promised a key to that area. Based on the e-mail correspondence submitted by the landlord, though, the tenant was directed, on 04 March 2020, to store the homeowner's personal property in the second bedroom and she was informed that the homeowner's brother would move it to storage at the end of March 2020.

19. Subsections 16.(5) and (6) of the *Residential Tenancies Act 2018*, state:

(5) *Where a landlord discontinues a service, privilege, accommodation or benefit or a service, privilege, accommodation or benefit is unavailable for a period of time, and the discontinuance or unavailability results in a reduction of the tenant's use and enjoyment of the residential premises, the value of the discontinued service, privilege, accommodation or benefit is considered to be an increase in the amount of rent payable.*

(6) *The director may, upon hearing an application under section 42, value a service, privilege, accommodation or benefit discontinued or unavailable for a time under subsection (5).*

20. That is, in this case, where the tenant would be without the use of a room and without the use of closets, cupboards and dressers for a period of time, the landlord is required to provide the tenant with a minimum of 6 month's notification that she would be without those privileges and accommodations and, furthermore, she could not be denied their use within the first 12 months of her tenancy. Those are the rental increase notice requirements.

21. Where such notice is not given, the reduction in the tenant's enjoyment of the rented premises is considered to be an improper rental increase and the Director can value that improper rental increase and order an appropriate refund.

22. Given that the tenant's rent was \$1550.00 per month for a 2-bedroom apartment, and given that one of those rooms was used for storage and that the tenant could not use all of the furniture promised to her, I agree with her that she is entitled to a rebate of \$500.00 for each of the 4 month's claimed here.

Decision

23. The tenant's claim for a rebate of rent succeeds in the amount of \$2000.00.

Issue 2: Inconvenience - \$350.00

Relevant Submissions

The Tenant's Position

24. The tenant stated that when she first took possession of the property in March 2020 it became immediately evident to her that the unit had not been cleaned.
25. She stated that she had spent her first weekend at the unit cleaning and also gathering the homeowner's personal possessions and moving them to the second bedroom. She also pointed out that the homeowner had left behind a lot of expired food in the cupboards and the refrigerator which she had to dispose of and she had to clean those areas as well.
26. The tenant is seeking \$350.00 in compensation for her time in carrying out that work.

The Landlord's Position

27. The landlord acknowledged that there were items left behind at the rental unit when the tenant moved in and she pointed out that because of restrictions related to the COVID-19 pandemic, there was not a lot that she was able to do for the tenant to assist her.
28. The landlord stated that she had offered the tenant \$200.00 in compensation for the cleaning she had to carry out when the tenant first moved in, and at the hearing she stated that she was willing pay the tenant \$300.00 in compensation for her inconvenience.

Analysis

29. The landlord did not contest the tenant's claim that she was required to carry out some cleaning when she moved into the unit. As she acknowledges that the tenant is entitled to compensation in the amount of \$300.00, I find that the tenant's claim succeeds in that amount.

Decision

30. The tenant's claim for compensation for inconvenience succeeds in the amount of \$300.00.

Issue 3: Rent - \$2600.00

Relevant Submissions

The Landlord's Position

31. The landlord submitted rent records with her application showing the payments she had received from the tenant since she had moved into the unit. According to these records, the tenant only paid \$1500.00 for April 2020, leaving a balance of \$50.00. She owed an additional \$1050.00 for May 2020 and she pointed out that no payments were received for June 2020.
32. The landlord is seeking an order for a payment of \$2650.00 for those 3 months (\$50.00 + \$1050.00 + \$1550.00).

The Tenant's Position

33. The tenant did not dispute the landlord's rent records and acknowledged that she owes \$2650.00 for the period ending 30 June 2020.

Analysis and Decision

34. As there was no dispute about this portion of the landlord's claim, that claim succeeds in the amount of \$2650.00.

Issue 4 - Hearing Expenses

35. The tenant submitted a hearing expense claim form and a receipt for \$20.00 for the costs of filing this application, receipts totalling \$58.65 for the costs of mailing documents to the landlord and this Section by registered mail, and a receipt for \$32.29 for the costs of developing photographs.
36. Policy with this Section is that the party that receives an award shall have their hearing expenses awarded also. For the filing fee, however, that expense may only be claimed if the amount of the award is greater than the amount of the security deposit. When the landlord's counterclaim for rent is set off against the tenant's combined award, the total amount is less than the amount of the security deposit. As such, the tenant's claim for hearing expenses succeeds in the amount of \$90.94 (\$58.65 + \$32.29)

Issue 5: Security Deposit - \$1162.50

37. It is acknowledged in the submitted rental agreement that the tenant had paid a security deposit of \$1162.50. As both claims have been successful, that deposit shall be disposed of as follows:

- a) Refund Security Deposit\$1162.50
- b) Rebate of Rent.....\$2000.00
- c) Compensation for Inconvenience.....\$300.00
- d) Hearing Expenses.....\$90.94
- e) LESS: Rent Owing (\$2650.00)
- f) Total Owing to Tenant.....\$903.44

02 February 2021

Date

John R. Cook
Residential Tenancies Tribunal