

Residential Tenancies Tribunal

Application [REDACTED]
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Decision 21-0031-03

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:12 AM on 16 August 2021 via teleconference.
2. The applicant, [REDACTED] hereinafter referred to as “the tenant”, participated in the hearing. The respondent, [REDACTED] hereinafter referred to as “the landlord”, also participated.

Issues before the Tribunal

3. The tenant is seeking the following:
 - A determination of the validity of a termination notice,
 - An order for a refund of a \$487.00 security deposit, and
 - An order for a return of missing possessions valued at \$2125.00.
4. The landlord is seeking the following:
 - An order for a payment of rent in the amount of \$800.00;
 - An order for a payment of \$75.00 in late fees,
 - An order for a payment of \$155.20 in compensation for damages, and
 - Authorization to retain the \$487.00 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 are sections 15, 18 and 33 of the *Residential Tenancies Act, 2018* and policy 9-3: Claims for Damage to Rental Premises.

Issue 1: Validity of Notice

Relevant Submissions

The Tenant's Position

7. With his application, the tenant submitted a copy of a rental agreement showing that he had entered into a 4-month, fixed-term lease with the landlord commencing 29 April 2020 (█ #1). The agreed rent was set at \$800.00 per month and it is acknowledged in the agreement that the tenant had paid a security deposit of \$487.00.
8. The tenant stated that on 19 August 2020 he was arrested and a few days later he spoke with the landlord, who informed him that he had 3 days to remove his possession from the rented property. He testified that he had told the landlord that he could make arrangements to have his items removed and he also informed him that he was willing to pay for rent for September 2020. The tenant stated that the landlord would not agree to those arrangements and he has not returned to the property since.
9. The tenant is seeking a determination of the validity of the 3-day, verbal termination notice the landlord had issued him in late August 2020.

The Landlord's Position

10. The landlord denied that he had issued the tenant a 3-day notice of termination. Instead, he testified that on 01 August 2020 he had posted a written notice of termination to the door of the rental unit. That notice had an effective termination date of 01 September 2020.
11. After the tenant was arrested, the landlord stated that he was in contact with the tenant's mother and sister and he tried to make arrangements with them to have the tenant's items removed from the property. He stated that they informed him that they would not be able to collect those items and so, on 31 August 2020, when he reclaimed possession of the rental unit, he collected the tenant's belongings and stored them in the shed.

Analysis

12. There is no dispute that after the tenant was arrested, the landlord took possession of the unit, at the end of August 2020, and the tenant never did return to reside at the property. But was the manner in which this tenancy came to an

end in accordance with the requirements outlined in the *Residential Tenancies Act, 2018*?

13. Section 18 of the *Residential Tenancies Act, 2018* deals with the notice requirements landlords must abide by in terminating rental agreements. The relevant subsections state:

Notice of termination of rental agreement

18. (2) *A landlord shall give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises*

...

(b) not less than 3 months before the end of a rental period where the residential premises is rented from month to month; and

...

(9) In addition to the requirements under section 34, a notice under this section shall

(a) be signed by the person providing the notice;

(b) be given not later than the first day of a rental period;

(c) state the date, which shall be the last day of a rental period, on which the rental agreement terminates and the tenant intends to vacate the residential premises or the date by which the tenant is required to vacate the residential premises; and

(d) be served in accordance with section 35.

14. The landlord denied that he had given the tenant a verbal, 3-day notice of termination in late August 2020. The tenant denied that he had been issued a 1-month notice on 01 August 2020. Besides their testimony, no evidence was submitted by either party which would allow me to make a determination as to whether any termination notice had been issued at all, or, if so, whether it was a 3-day or a 1-month notice.
15. Regardless, as a landlord can only terminate a rental agreement on 3 month's written notice, as quoted above, I have to conclude that this tenancy was not properly terminated, and that even if a notice was issued, be it a 3-day notice or a 1-month notice, it is invalid.

Decision

16. The landlord did not properly terminate this tenancy in accordance with the *Residential Tenancies Act, 2018*.

Issue 2: Missing Possessions - \$2125.00

Relevant Submissions

The Tenant's Position

17. The tenant stated that, after he had been arrested, he had offered to have someone go to the rental unit to collect his belongings, but the landlord did not take him up on that offer. He also claimed that the landlord could not have been in contact with his sister about his possessions, as she lived out of province, and he pointed out that his mother was aged and in poor health, and she would have been unable to collect his items while he was incarcerated.
18. The tenant alleged that the landlord had disposed of all of his possessions which were at the unit, after he was arrested, and he submitted a list of those possessions with his application indicating the costs of replacing each item (██████████ #2). That list consisted of some basic furniture, cookware and some small kitchen appliances, and the tenant calculated that it would cost \$2125.00 to replace those items. He is seeking an order for a payment of that amount. No receipts or estimates were submitted with his claim.

The Landlord's Position

19. The landlord claimed that the tenant's family had given him permission to dispose of the tenant's belongings.
20. He also testified that, on 31 August 2020, after he regained possession of the unit, he removed the tenant's possessions and he put them in the shed. He stated that he had contacted ████████████████████ about donating these items, and, on 02 September 2020, they were delivered to that organization.
21. The landlord acknowledged that the list provided by the tenant was an accurate description of the items that had been left behind, but he argued that the tenant had exaggerated their present value. He claimed that a lot of these items were quite old and in poor condition and he figured that they would have only been worth \$200.00.

Analysis

22. I determined in the previous section that the landlord had not properly terminated his rental agreement with the tenant and I have to therefore conclude that, on 31

August 2020, when the landlord entered and took possession of the rental unit and the tenant's personal possessions, he had acted in contravention of section 33 of the Act, which 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.*

23. Given that the landlord had improperly seized, and disposed of, the tenant's personal possessions, prior to the termination of this tenancy, I have to agree with the tenant that the landlord is responsible for the costs of their replacement.
24. However, as the tenant submitted no evidence to the Board to show the condition of these items and as no evidence was presented to establish the costs of their current depreciated value, I cannot award him the full costs he is seeking here. I find \$1000.00 to be a fair award in compensation for the depreciated value of a used bed, couch, table and chair set, and kitchenware.

Decision

25. The tenant's claim for the costs of replacing his missing possessions succeeds in the amount of \$1000.00.

Issue 3: Compensation for Damages - \$155.20

Relevant Submissions

The Landlord's Position

26. The landlord stated that after he had regained possession of the unit, he was required to carry out some repairs to the walls and the floors.
27. With respect to the walls, the landlord claimed that there were marks on the wall in the bedroom that required plastering and he stated that these walls also had to be repainted. The landlord stated that it took him about 6 hours to repair that damage and he testified that these walls were last painted about a year before the tenant moved in. No photographs were submitted showing this damage and no receipts or invoices were submitted showing the costs of the materials.
28. Regarding the floor, the landlord stated that he was required to replace a piece of the laminate because of damage caused by the tenant's cat's litter box. He testified that it took him about 5 hours to carry out that work. No photographs were submitted showing that damage and no receipts or invoices were submitted with the landlord's application.

The Tenant's Position

29. The tenant stated that there were already marks on the walls when he moved into the unit and he also claimed that there were already problems with the laminate floors as well.

Analysis

30. Under Section 10.(1)2. of the *Residential Tenancies Act, 2018* the tenant is responsible to keep the premises clean and to repair any damage caused by a willful or negligent act.

2. *Obligation of the Tenant* - The tenant shall keep the residential premises clean, and shall repair damage caused by a willful or negligent act of the tenant or of a person whom the tenant permits on the residential premises.

Accordingly, in any damage claim, the applicant is required to show:

- That the damage exists;
- That the respondent is responsible for the damage, through a willful or negligent act;
- The value to repair or replace the damaged item(s)

In accordance with Residential Tenancies policy 9-3, the adjudicator must consider depreciation when determining the value of damaged property. Life expectancy of property is covered in Residential tenancies policy 9-6.

Under Section 47 of the *Act*, the director has the authority to require the tenant to compensate the landlord for loss suffered or expense incurred as a result of a contravention or breach of the *Act* or the rental agreement.

Order of director

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

(a) determining the rights and obligations of a landlord and tenant;

(b) directing the payment or repayment of money from a landlord to a tenant or from a tenant to a landlord;

(c) requiring a landlord or tenant who has contravened an obligation of a rental agreement to comply with or perform the obligation;

(d) requiring a landlord to compensate a tenant or a tenant to compensate a landlord for loss suffered or expense incurred as a result of a contravention of this Act or the rental agreement

31. The tenant denied that he had caused any damage to the walls or floors at the rental property and the landlord submitted no evidence showing that there was any damage (e.g., photographs), no evidence to establish that the damage was caused during this tenancy (e.g., a condition report) and no evidence to establish the costs he is seeking here (e.g., receipts). As such, his claim does not succeed.

Decision

32. The landlord's claim for compensation for damages does not succeed.

Issue 4: Rent - \$800.00

Relevant Submissions

The Landlord's Position

33. The landlord testified that the tenant did not pay his rent for August 2020 and he is seeking an order for a payment of \$800.00 for that month.

The Tenant's Position

34. The tenant stated that he had paid his rent for August 2020 and he claimed that he always paid his rent on time. He testified that after he was arrested, he even offered to pay to pay rent for September 2020 so that he could have more time to have his possessions removed from the unit.

Analysis

35. As the tenant asserted that he had paid his rent for August 2020, he has the burden of establishing that fact. But besides his testimony, which was contradicted by the landlord, no evidence was presented at the hearing, e.g., receipts, banking statements, etc., to establish that rent was paid for that month. As such, the landlord's claim for a payment of rent for August 2020 succeeds.

Decision

36. The landlord's claim for a payment of rent succeeds in the amount of \$800.00.

Issue 5: Late Fees - \$75.00

37. The landlord has assessed a \$75.00 late fee.

Analysis

38. Section 15 of the *Residential Tenancies Act, 2018* states:

Fee for failure to pay rent

15. (1) *Where a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister.*

The minister has prescribed the following:

Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed:

(a) \$5.00 for the first day the rent is in arrears, and

(b) \$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00.

39. As the tenant has been arrears since August 2020, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

40. The landlord's claim for late fees succeeds in the amount of \$75.00.

Issue 6: Security Deposit

41. The tenant paid a security deposit of \$487.00 on 29 April 2020 and receipt of that deposit is acknowledged in the submitted rental agreement. As the tenant's claim has been successful, that deposit shall be disposed of as outlined in this decision and attached order.

Summary of Decision

42. The landlord had not terminated this tenancy in accordance with section 18 of the *Residential Tenancies Act, 2018*.

43. The tenant is entitled to the following:

- a) Compensation for Missing Possessions \$1000.00
- b) Refund of Security Deposit \$487.00
- c) LESS: Rent..... (\$800.00)
- d) LESS: Late Fees..... (\$75.00)
- e) Total Owing to Tenant..... \$612.00

07 March 2022

Date

