

Residential Tenancies Tribunal

Application [REDACTED]
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Decision 21-0239-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:05 PM 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:
 - An order for a refund of the security deposit in the amount of \$350.00, and
 - An order for a payment of “Other” expenses totaling \$575.00.
4. The landlord is seeking the following:
 - An order for a payment of rent in the amount of \$650.00,
 - An order for a payment of utilities in the amount of \$804.07,
 - An order for a payment of \$75.00 in late fees,
 - An order for a payment of hearing expenses totalling \$20.00, and
 - Authorization to retain the \$325.00 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 14, 16, 18, 20 and 21 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

7. The tenant amended her application and stated that she was seeking an order for a refund of a security deposit which actually totalled \$675.00, not \$350.00.

Issue 1: “Other” Expenses - \$575.00

Relevant Submissions

The Tenant’s Position

8. The landlord and tenant entered into a verbal rental agreement in December 2017. The agreed rent was set at \$575.00 and the tenant stated that this rent included the provision of cable and Wi-Fi.
9. On 02 June 2020, the landlord issued the tenant a termination notice, indicating that he was terminating their rental agreement, effective 02 September 2020. The tenant vacated the unit in late June 2020.
10. In February 2018, because the tenant had not been using the cable, the landlord asked if he could remove and return her cable box. The tenant stated that she did agree to that request, but it was also agreed that if she changed her mind, the landlord would reinstall the cable box for her.
11. The tenant testified that in April 2018, she did have a change of mind and requested that the landlord reinstall the cable, but he refused. She has been without cable since that time.
12. The tenant argued that as the provision of cable was included in the rent she was paying, she is therefore entitled to a rebate. The tenant is seeking a payment of \$25.00 per month for 24 months, which she calculates as \$575.00.

The Landlord’s Position

13. The landlord acknowledged that he had removed the cable box from the tenant’s room, with her permission, in 2018, as she was not using it. He testified that the agreement he entered into with her, at that time, was that if she changed her mind, he would be willing to once again pay the monthly rental fee for the cable box, approximately \$8.00 a month, on the condition that she pay for the costs of installing the box, which would be approximately \$100.00.
14. The landlord stated that the tenant was not willing to pay the costs of installing the cable box and that is the reason she has not had cable for the past 2 years.

Analysis

15. There is no dispute that the provision of cable was a service that the tenant had agreed to pay for, as part of her rent, when she entered into the rental agreement with the landlord in 2017. It is also not disputed that the tenant was without cable since 2018.
16. Section 16 of the *Residential Tenancies Act, 2018* states:

Rental increase

16. (1) *Notwithstanding another Act, agreement, declaration, waiver or statement to the contrary, a landlord shall not increase the amount of rent payable by a tenant,*

(a) where the residential premises is rented from week to week or month to month, more than once in a 12 month period;

(b) where the residential premises is rented for a fixed term, during the term of the rental agreement; or

(c) where a tenant continues to use or occupy the residential premises after a fixed term has expired, more than once in a 12 month period.

...

(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).

17. I accept the tenant's claim that she was seeking to have the cable reinstated in 2018, and as the landlord presented no credible evidence to support his claim that the tenant had verbally agreed to pay for the installation of the cable box, I conclude that his failure to provide cable to the tenant amounts to an improper rental increase.
18. I accept the landlord's testimony that the costs of renting a cable box came to \$8.00 per month and I therefore find that the tenant is entitled to a rebate of that amount for the 25 months she was without cable: \$200.00.

Decision

19. The tenant's claim for "other" expenses succeeds in the amount of \$200.00.

Issue 2: Rent - \$650.00

Relevant Submissions

The Landlord's Position

20. The landlord stated that he was given no notice by the tenant that she was vacating her unit at the end of June 2020. He also complained that she refused to turn over her keys after she vacated.
21. The landlord testified that within days after the tenant vacated, he began advertising the unit for rent and he was able to secure a new tenant for 01 August 2020. During July 2020, though, the unit sat vacant and the landlord suffered a loss of rental income during that month. He is seeking \$575.00 in compensation.
22. He also complained that for the months of April, May and June 2020, the tenant had only paid him \$550.00 in rent for each of those months and he is also seeking to recover the \$25.00 that the tenant ought to have paid for those months—a total of \$75.00.

The Tenant's Position

23. The tenant stated that she had withheld \$25.00 in rent on those last 3 months because the landlord would not provide her with cable, as originally agreed.
24. The tenant did not dispute the landlord's claim that she had vacated at the end of June 2020 without notice, but she stated that she could no longer live at the unit because it was in disrepair. She submitted photographs with her application (■■■■ #1-4) showing that a window sill in her bedroom was damaged and that there was also some damage caused to the walls in the unit.

Analysis

25. Section 18 of the *Residential Tenancies Act, 2018* requires that, in a monthly tenancy, a tenant is to provide the landlord with at least 1 month's written notice that she is terminating her rental agreement and will be moving out of the property. I accept the landlord's claim that the tenant had not given him any notice that she was terminating her agreement and that he only discovered that she was vacating on 29 June 2020.
26. Even if the room the tenant was renting was in a state of disrepair, she is still required to provide a written notice of termination to the landlord, which could have been issued either under sections 20 or 21 of the *Act*.

27. Where a tenant vacates a rental property without first terminating her agreement in accordance with the *Act*, she is considered to have abandoned the unit and she is liable for any damages which result from that abandonment, including any loss of rental income suffered by the landlord.
28. I accept the landlord's claim that he had advertised the unit for re-rent shortly after the tenant moved out, but given that she vacated on 29 June 2020, it would have been almost impossible to secure a new tenant for July 2020. As the landlord suffered a loss of rental income for July 2020 because the tenant had not properly terminated their agreement, I find that the landlord's claim for compensation for that lost rent for July 2020 succeeds.
29. I also accept the landlord's claim that the tenant had withheld a total of \$75.00 in rent from the preceding 3 months.

Decision

30. The landlord's claim for a payment of rent succeeds in the amount of \$650.00.

Issue 3: Late Fees - \$75.00

31. The landlord has assessed a late fee of \$75.00.

Analysis

32. 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.

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

Decision

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

Issue 4: Utilities - \$804.07

Relevant Submissions

The Landlord's Position

35. The landlord stated that he had an agreement with the tenant that she would share the costs of electricity with the other tenants who were residing at the rented premises. He stated that for June 2020, the last month that the tenant was living at the unit, she did not pay that shared cost. He submitted his electricity bill for that month (████ #1) showing that he was charged \$125.07, and he calculates that the tenant's portion of that amount comes to \$42.00.
36. The landlord also testified that he had entered into a verbal agreement with the tenant that, during a 13-month period where she was not living at the property, but still renting her room, he would not charge her for electricity as she was not consuming any share of it. The landlord stated that because the tenant was telling lies and because she had not lived up to her agreement concerning the cable box, he is now renegeing on that agreement. He calculates that the tenant owes him \$762.07 for that 13 month period.

The Tenant's Position

37. The tenant reiterated the landlord's claim that there was an agreement with the other tenants at the property that they were not required to pay their share of the electricity costs if they were not residing at the unit. She pointed out that another tenant at the unit did not have to pay for the electricity while he was away for 2 weeks over Christmas.

Analysis

38. I accept the landlord's claim that the tenant had agreed to pay a portion of the electricity bill each month and that she had failed to pay her share of that last month's bill. I calculate that the tenant owes the landlord \$41.69 ($\$125.07 \div 3$).
39. With respect the costs of electricity that the landlord is seeking for the time that the tenant was absent from the unit, I find that that claim does not succeed as it was acknowledged by both sides that there was an agreement in place that the tenant did not have to pay any share of the electricity costs during that period. The issue of the agreement the landlord and tenant had entered into concerning the cable box has no bearing on this wholly separate agreement.

Decision

40. The landlord's claim for a payment of utilities succeeds in the amount of \$41.69.

Issue 5: Security Deposit

Relevant Submissions

The Tenant's Position

41. With her application, the tenant submitted a copy of a banking statement (█ #5) showing that she had sent \$325.00, as a security deposit, to the landlord on 28 November 2017.
42. This statement also shows that she had sent the landlord \$300.00 on 04 December 2017 and another \$300.00 on 07 December 2017. According to the tenant, as the rent was only \$575.00, this was an overpayment of \$25.00, which should be added on to the security deposit.
43. The tenant also pointed to one of the landlord's submissions, which is a photograph of his computer screen showing that he had received an e-Transfer of \$325.00 (█ #3). The tenant claimed that this piece of evidence shows that she had made a second overpayment on 27 December 2017, bringing the total deposit to \$675.00.

The Landlord's Position

44. The landlord stated that the tenant had only paid a security deposit of \$325.00, and he claimed that his submitted photograph (█ #3) shows that that deposit was paid on 28 November 2017.
45. With respect to the rent payments he had received in December 2017, the landlord acknowledged that the tenant had paid him \$600.00, but he claimed that when the tenant had first moved in, that was the agreed monthly rent and there was no overpayment. In January 2018, the tenant had asked that the rent be reduced to \$575.00 per month, and he agreed to that rate for the remainder of the tenancy.

Analysis

46. I find that the tenant had paid a total security deposit of \$325.00.
47. No evidence was submitted showing that the tenant had made an extra payment of \$325.00 on 27 December 2017. The exhibit submitted by the landlord clearly shows that he received that payment on 28 November 2017 and it became evident at the hearing the tenant was confusing the payment date with the expiry date of that e-Transfer.
48. I also find it probable that the tenant had agreed to pay \$600.00 in rent when she first moved into the unit, and that that rate of rent was only reduced some time later. That version of events explains why the tenant had sent the landlord \$600.00 in December 2017.

49. As the landlord's claim has been successful, he shall retain the \$325.00 security deposit as outlined in this decision and attached order.

Decision

50. The landlord shall retain the \$325.00 security deposit.

Issue 6: Hearing Expenses

51. The landlord paid a fee of \$20.00 to file this application. As his claim has succeeds, the tenant shall pay that hearing expense.

Summary of Decision

52. The landlord is entitled to the following:

- a) Rent\$650.00
- b) Late Fees\$75.00
- c) Utilities\$41.69
- d) Hearing Expenses\$20.00

- e) LESS: Rebate for Cable (\$200.00)
- f) LESS: Security Deposit..... (\$325.00)

- g) Total Owing to Landlord\$261.69

08 April 2022

Date

