

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0463-05

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:32 a.m. on 18-January-2022.
2. The applicant, [REDACTED] hereinafter referred to as “the landlord” attended by teleconference.
3. The respondents, [REDACTED] hereinafter referred to as “the tenants” attended by teleconference.
4. The tenants submitted an Authorized Representative (TT#01) form, naming [REDACTED] as their representative, hereinafter referred to as “the authorized representative.”
5. The landlord brought forward a witness, [REDACTED] hereinafter referred to as “the witness.”

Preliminary Matters

6. The landlord provided an affidavit (LL#01) stating that she served notification of the hearing to both tenants by email on 07-January-2022. The authorized representative confirmed this service.
7. The tenants provided an affidavit (LL#02) stating that they served the landlord notification of the hearing on 12-January-2022. This notification does not meet the 10 day requirement, the landlord, however, choose to waive her right to service and proceed with the hearing.
8. The landlord had initially claimed damages in the amount of \$340.00, she amended this claim by waiving the claim for painting and she is now seeking damages for \$110.00 for cleaning.

9. The tenants were seeking compensation for inconvenience for \$140.00, the authorized representative said that they would no longer be filing for this claim.

Issues before the Tribunal

10. The landlord is seeking:
- Rent \$975.00
 - Damages \$140.00
 - Security deposit applied against monies owed \$450.00
11. The tenants are seeking:
Security deposit refunded

Legislation and Policy

12. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
13. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 10: Statutory conditions, Section 14: Security deposit, Section 18: Notice of termination of rental agreement and Section 34 Requirements for notices.

Issue 1: Rent \$975.00

Landlord's Position

14. The landlord submitted the rental agreement that she has with the tenants (LL#02). The tenants moved in on 11-May-2021 and payed a daily rate of \$629.00. In June they began a monthly agreement, rent is \$975.00 a month. The rental period is from the 1st to the end of the month, rent is due on the 1st day of each month. On 11-May-2021 the tenants paid a security deposit of \$450.00; the landlord is still in possession of the deposit.
15. The landlord submitted a standard 3 month termination notice (LL#05) that is dated for 31-August-2021 with a termination date of 30-November-2021. She also submitted a text message (LL#03), dated 01-September-2021, of her informing the tenant that she had just placed the termination notice on their door that morning.
16. In the text message (LL#03) the tenant asks why they are being terminated and the landlord replies in (LL#04) that the arrangement is not working out due to noise and that she had the option to terminate due to peaceful enjoyment and just give them 10 days' notice but she instead chose to do a standard notice and give them 3 months.
17. The landlord showed that the text message (LL#04) went on to say, that the tenants would be moving on 31-September-2021: dated 07-September-2021, and then that the

keys are left on the stove 30-September-2021, as well as, a request for the security deposit to be sent back.

18. The landlord said that she didn't see the text on the 7th saying that the tenants were moving. She said that when they texted back on the 30th saying that the keys were there, this was the first she realized that they were moving. She said that she didn't think the notice was valid and following up the Residential Tenancies for direction. She didn't enter the apartment until 06-October-2021 when she was given direction from Residential Tenancies that she could do so.
19. The landlord said that they have to give a month's notice and she was unable to rent the apartment until November, so that they should have to pay for the rent for their notice.

Tenants' Position

20. The authorized representative said that the tenants were surprised that they were being evicted. She said that when they asked why and the landlord said that she could have evicted them with 10 days' notice they were concerned that this was a threat and that they could receive another termination notice at any time.
21. Further to this the authorized representative said that when they checked the *Residential Tenancies Act, 2018*, it stated that they could be evicted with 5 days' notice for peaceful enjoyment. This caused additional concern because they thought they could be without housing at any time.
22. The authorized representative said that they gave notice as soon as they secured a place to live.
23. The authorized representative also pointed out that the tenants live in the basement apartment of the landlord and that it is not their responsibility that she didn't check this message until the end of the month and that they also believe that the landlord would know that they are moving because they had moving trucks in the yard the days before the 30th.

Analysis

24. Section 18 of the *Residential Tenancies Act, 2018*, says:

Notice of termination of rental agreement

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

.....

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

.....

25. It is reasonable for the tenants to be concerned when their housing is in jeopardy. I do not consider the landlord's text saying she could have evicted with 10 days' notice, due to peaceful enjoyment, as a threat. I can, however, also see the tenants side of the situation, that they were concerned that it was a threat and that their housing is in jeopardy.
26. Section 18 of the Act does determine that the tenants are expected to give a full month's notice to a landlord when they are in a monthly agreement, as is the case here. In addition to that, they are to give the notice no later than the first day of the rental period. Therefore, the earliest that the tenants could terminate would be of 31-October-2021. Their notice is not valid and doesn't meet the timelines of the *Act*.
27. Unless a landlord and tenant agree to termination of an agreement on a specific date, the notice must follow the guidelines in Section 34 of the *Act*, as follows:

Requirements for notices

34. A notice under this Act shall

- (a) be in writing in the form prescribed by the minister;
 - (b) contain the name and address of the recipient;
 - (c) identify the residential premises for which the notice is given; and
 - (d) state the section of this Act under which the notice is given.
28. The tenants are responsible for the rent for the period of 01-October-2021, they shall pay the landlord \$975.00

Decision

29. The landlord's claim for rent succeeds in the amount of \$975.00

Issue 2: Damages \$140.00

Landlord's Position

30. The landlord is seeking damages for the cleaning of the apartment after the tenants vacated to get rid of the pet hair.
31. The landlord said that she didn't realize that the tenants had pets and that they had signed a lease agreement agreeing to no pets. The witness said he was in the apartment doing repairs when he saw that there was a cat in the apartment. He subsequently told this to the landlord.
32. The landlord submitted the lease agreement (LL#06) and she indicated that she amended section 11 to show that the tenants had brought a cat with them when they

rented the apartment. They had signed a no pet agreement, so the landlord amended the agreement to say that the cat was permitted but the tenants had to agree that they would repair any damage caused by the cat and that they would have the apartment professionally cleaned after they leave.

33. The landlord acknowledges that the tenants didn't sign the agreement, however, they did agree to this amendment in a text (LL#07) on 07-June-2021.
34. The witness said that another time when he was downstairs, doing another repair, he noticed a second cat and he also told this to the landlord.
35. The landlord submitted pictures (LL#08) of dirt and cat hair left behind after the tenants moved.
36. The landlord submitted a receipt (LL#09) for \$110.00 from [REDACTED] for the removal of pet hair and cleaning of the apartment.

Tenants' Position

37. The authorized representative said that the tenants never tried to hide that they had cats.
38. They acknowledge that they agreed to have the place professionally cleaned once they moved.
39. The tenants submitted a number of pictures (TT#03) showing the apartment after they left.
40. The authorized representative said that the tenants used a family member, who is a professional cleaner, to clean the apartment once they left. They submitted affidavits from clients of the family member stating that she is a professional cleaner (LL#04).
41. They believe that they have followed through on their end of the agreement by having the apartment cleaned.

Analysis

42. Section 10 of the *Residential Tenancies Act, 2018*, says:
Statutory conditions

10. (1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:

.....

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

.....

43. The tenants' text agreement (LL#07) to amend the lease agreement (LL#06) is an agreement to have a professional cleaner clean the apartment.
44. It is unfortunate that the cleaner did not clean the apartment to the landlord's satisfaction, however, the tenants did have a professional cleaner do the cleaning as stated in their agreement.
45. The tenants have met the standard of their agreement.

Decision

46. The landlord's claim for cleaning expenses fails.

Issue 3: Security deposit applied \$450.00 / Security deposit refunded

Relevant Submissions

47. As per paragraph 14, the landlord declared that, the tenants paid a security deposit of \$450.00; she is still in possession of that deposit. She is requesting to retain that damage deposit towards monies owed by the tenants for rent.
48. The tenants are requesting to have the deposit returned.

Analysis

49. The landlord's claim for losses has been successful, paragraph 30, and she shall retain the deposit as per Section 14 of the *Residential Tenancies Act, 2018*, see below:
 14. (10) Where a landlord believes he or she has a claim for all or part of the security deposit,
 - (a) the landlord and tenant may enter into a written agreement on the disposition of the security deposit; or
 - (b) the landlord or the tenant may apply to the director under section 42 to determine the disposition of the security deposit

Decision

50. The Tenants claim to have the security deposit returned fails. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$450.00.

Summary of Decision

51. The landlord is entitled to \$975.00 rent, she may retain the security deposit of \$450.00 and,

The tenants shall pay the remaining balance of the rent ($\$975.00 - \$450.00 =$) \$525.00.

January 21, 2022

Date

