

## Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0531-05

Jacqueline Williams  
Adjudicator

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### Introduction

1. Hearing was called at 9:45 a.m. on 08-March-2022.
2. The applicant, [REDACTED] hereinafter referred to as “the tenant” attended by teleconference.
3. The respondent, [REDACTED] hereinafter referred to as “the landlord” did not attend.

### Preliminary Matters

4. The tenant was not present or represented at the hearing and I was unable to reach him by telephone at the start of the hearing. This Tribunal’s policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, where the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent’s absence so long as he has been properly served. The tenant submitted an affidavit (TT#01) with her application, stating that she had served the landlord with notice of the hearing, in person, on 01-December-2021. As the landlord was properly served, and as any further delay in these proceedings would unfairly disadvantage the tenant, I proceeded with the hearing in his absence.

### Issues before the Tribunal

5. The tenant is seeking:
  - Rent \$700.00
  - Inconvenience \$1,500.00
  - Hearing Expenses \$20.00

## Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
7. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 9: Landlord and tenant relationship and Section 18: Notice of termination of rental agreement.

## Issue 1: Rent \$700.00

### Relevant Submissions

8. The tenant said she responded to a Kijiji ad (TT#02, TT#03 & TT#04) looking for an apartment. Initially, she is speaking with a person named [REDACTED], and then the conversation continues with the landlord. The landlord indicates that he has another apartment for rent in her price range and the tenant is interested. The landlord said that he is renting the apartment for his father. She never met [REDACTED] and with the exception of the original Kijiji conversations all interactions are with the landlord.
9. The landlord said that the apartment is \$700.00 a month with utilities, internet and a washer and dryer included. The apartment was pet friendly. It was a monthly rental with rent being due on the first day of each month. He said that there is a \$500.00 security deposit required and that the apartment would be available on 01-November-2021.
10. When she viewed the apartment with the landlord, she decided she wanted to rent the apartment. The landlord provided her with his phone number and the email address in a text (LL#05) to do an e-transfer. The landlord's email address is in the name of the first individual that she spoke with; [REDACTED].
11. The tenant sent the \$700.00 rent for 01-November-2021 on 11-October-2021. She included the text showing the accepted e-transfer of the rent (TT#06). At that time she said that she could send the \$500.00 security deposit either in the first week renting, when she received her current security deposit back, or she offered to make arrangements to juggle her finances and get it to him before she took possession.
12. On 15-October-2021, she sent a text (TT#07), asking could she move in a few days early on 30-October-2021, she would need to be out of her current place before 01-November-2021. In the email thread where the landlord is responding back (TT#08), he tells her that there is currently damage to the apartment and it will not be ready for the first of November.
13. On 22-October-2021, he sends her another text (TT#09), he tells her that there is about \$4,000.00 worth of damage and the apartment will not be ready until 01-December-2021.
14. At this point, the tenant starts asking is there anything she can do to help get the apartment ready so that she can move in and help do the repairs.

15. The tenant is still interested in the apartment and says that she will move in, in December if there is nothing else that can be done.
16. On 23-October-2021, the landlord tells her (TT#11) that he is doesn't have time for all her texts, he is done with her, he will give back the money and she can rent from someone else.
17. He has told her numerous times that he is returning the money, to date he has not.
18. She is asking for her rent returned \$700.00.

### **Analysis**

19. I accept that tenant's testimony and documentation (LL#06) of the e-transfer; that she paid the landlord for November rent. It is clear that the rent paid by the tenant is owed to her by the landlord, as he did not give her possession of the apartment.

### **Decision**

20. The tenant's claim for rent succeeds in the amount of \$700.00.

### **Issue 2: Inconvenience \$1,500.00**

#### Relevant Submissions

21. The tenant said she is requesting \$1,500.00 for inconvenience. The \$1,500.00 is for the November and December rent of \$750.00 for her apartment that she is currently renting. This is the same apartment that she was in before she started the rental agreement with this landlord. She had to pay rent for November in two places and the place she is still renting is \$50.00 more a month.
22. She said that the landlord caused a lot of stress by taking her money and not providing a key or permitting her to move into the apartment. The tenant had already given notice to her current landlord and was in the process of making arrangements for her move.

### **Analysis**

23. The question at hand is, does the landlord owe the tenant for inconvenience?
24. Section 9 of the Residential Tenancies Act, 2018, states:

#### *Landlord and tenant relationship*

*9. (1) A relationship of landlord and tenant takes effect when the tenant is entitled to use or occupy the residential premises whether or not the tenant actually uses or occupies it.*

(2) *The doctrine of frustration of contract and the **Frustrated Contracts Act** apply to a rental agreement.*

(3) *A common law rule respecting the effect of the **contravention of a material covenant** by a party to a contract on the obligation to perform by the other party applies to a rental agreement.*

(4) *Where a relationship of landlord and tenant exists, a covenant concerning a thing related to the residential premises is considered to run with the land whether or not the thing is in existence at the time the relationship commenced.*

25. According to Section 9, once the tenant paid her rent, and the landlord accepted the payment of that rent, they have entered into a binding agreement and, according to the *Residential Tenancies Act, 2018*, they have entered a verbal contract and are now a landlord and tenant.
26. A Frustrated Contract, means that an unforeseen occurrence has meant that the contract between the two parties cannot be fulfilled, due to no fault of either party and both parties can walk away from the contract. Therefore, because the damages that occurred in the apartment are not the fault of either party and were unforeseen by the parties, the apartment is not ready to rent in the condition it was in, in October 2021; both parties could have chosen to walk away from the contract. However, the tenant offered viable amendments to the contract, by agreeing to assist with repairs or accept a later date of possession.
27. The landlord did not agree to the tenant's reasonable attempts to mitigate this situation and violated the terms of their contract by not giving her possession of the apartment. The landlord is in contravention of a material covenant when he denies her access to the apartment she has paid for.
28. Although the tenant never takes occupancy of the apartment, she has paid for the apartment and the landlord has accepted the payment, as shown in paragraph 11, they are now in a landlord tenant relationship. Due to that relationship, the landlord has obligations to the tenant based on their contract and the *Residential Tenancies Act, 2018*.
29. For the landlord to decide to end the tenant's rental agreement he has to terminate the verbal agreement that they have entered. As per Section 18, of the *Residential Tenancies Act, 2018*, the landlord must:

***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*

*(a) not less than 4 weeks before the end of a rental period where the residential premises is rented from week to week;*

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

*(c) not less than 3 months before the end of the term where the residential premises is rented for a fixed term.*

- 30. The landlord must give the tenant three months' notice of termination of their agreement. The landlord did not provided any notice to the tenant and one week before the tenant was to take occupancy he broke their contract. The landlord is required to mitigate the tenant's loss in this situation. The tenant voiced how stressful this situation was. She had to pay rent in two places, she had made arrangements and started the moving process.
- 31. She is appealing to this board that the landlord be responsible for her rent for the two months following where she was paying \$750.00 a month instead of the \$700.00 for the apartment that she had entered the agreement for.
- 32. The landlord has caused her the financial loss of paying an extra \$50.00 a month for the following two months and I agree that the landlord owes the tenant for the inconvenience of paying a higher rent and he shall reimburse the \$50.00 extra she paid for her current apartment for the two months. I find that the landlord owes the tenant \$100.00 for the additional rent she had to pay for her current apartment.

**Decision**

- 33. The tenant's claim for inconvenience succeeds in the amount of \$100.00.

**Issue 3: Hearing expenses reimbursed \$20.00**

- 34. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#12) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

**Summary of Decision**

- 35. The landlord shall pay the tenant for \$820.00 for rent, inconvenience and hearing expenses as follows:

- Rent.....\$700.00
- Inconvenience..... 100.00
- Hearing expenses..... 20.00
- Total..... \$820.00

March 10, 2022  
Date

