

Residential Tenancies Tribunal

Application 2024-0571-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 12-September-2024 at 2:01 pm.
2. The applicant, [REDACTED] and [REDACTED], hereinafter referred to as the tenants, attended via teleconference.
3. The respondent, [REDACTED], hereinafter referred to as the landlord, did not attend.

Preliminary Matters

4. The respondent was not present or represented at the hearing. I contacted them by phone call and spoke to a representative of the property management corporation who advised me that there was no one available to attend at this time, as their normal representative at these hearings was on leave. I was also told that they had been aware of the hearing and this issue and had provided the homeowner with the information necessary to attend the hearing on their own behalf. They provided me with the homeowner's telephone number and I attempted to call them but the call was unable to connect.
5. 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 they have been properly served. The tenants submitted an affidavit (T#1) stating that they had served the respondent electronically on 26-July-2024 at 11:06 am. The appropriate supporting documents constituting proof of service were also provided (T#2-4). As the respondent had been properly served, and as further delay would unfairly disadvantage the tenant, I proceeded with the hearing in their absence.
6. A counterclaim (2024-0723-NL) had been filed by the respondent but was dismissed in response to their absence.

Issues before the Tribunal

7. Should the tenant's claim for a refund of rent succeed?
8. What is the proper disposition of the security deposit?

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act*, 2018 (the *Act*).

Issue 1: Unpaid Rent

10. The tenants claim \$1050 as a refund of rent. They testified that they signed a 1-year fixed term written lease agreement that covered from 1-August-2019-31-July-2020, then moved to a month-by-month agreement on the same terms for the following year. On 26-July-2021 they signed another fixed term lease effective from 1-August-2021 to 31-July-2022. They then moved again to a month-by-month agreement on the same terms.
11. The tenants testified that 1-June-2022 they received notice that the rent would be increased for 1-December-2022 from \$1100/month to \$1250/month. They submitted that this was an illegal rental increase.
12. It may be helpful at this point to clarify the law regarding fixed term and month-to-month agreements and the required notice for increases of rent. First, s. 8(3)(a) of the *Act* states:

Types of rental agreement

8.
 - (3) Where a tenant continues to use or occupy a residential premises after a fixed term has expired, and notice of termination of the rental agreement
 - (a) has not been given, the relationship of landlord and tenant shall continue under the terms and conditions in the rental agreement, but the tenancy may be terminated by giving notice in accordance with paragraph 18(1)(b) or 18(2)(b); or
 - (b) has been given, the relationship of landlord and tenant shall continue under the terms and conditions in the rental agreement until the expiration of the notice period.
13. It is by this rule that, when a fixed term agreement expires and a termination notice has not been given, the rental agreement continues under the same terms and conditions save for the effect that it is now a month-to-month agreement. This occurs automatically and without regard to any agreement between the parties. A month-to-month can be ended and replaced by a fixed term by signing a written fixed term agreement.

14. S. 16(1-3) of the *Act* reads as follows:

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.

(2) Notwithstanding subsection (1), a landlord shall not increase the amount of rent payable by a tenant during the 12 month period immediately following the commencement of the rental agreement.

(3) Where a landlord increases the amount of rent payable by a tenant, the increase shall be effective on the first day of a rental period, and the landlord shall give the tenant written notice of the increase

- (a) not less than 8 weeks before the effective date of the increase where the residential premises is rented from week to week; and
- (b) not less than 6 months before the effective date of the increase where the residential premises is rented from month to month or for a fixed term.

15. S. 16(1)(a) says that a month-to-month agreement cannot have a rent increase more than once in a 12-month period. S. 16(1)(b) says that a fixed term lease cannot have a rental increase during the fixed term. S. 16(2) states that a landlord shall not increase the rent in the 12-month period immediately following the commencement of a rental agreement. S. 16(3) states that whether it is a fixed term or a month-to-month, a rental increase requires written notice to be issued not less than six months prior to the date it would be effective.

16. There was no evidence that the rent was increased more than once in a 12-month period. S. 16(1)(a) has therefore not been contravened. S. 16(2) is not contravened because 1-August-2022 did not mark the beginning of a new rental agreement, but rather the continuation of the previous agreement, meaning at the time the rental increase took effect, it had been 17 months after the commencement of the rental agreement. S. 16(3)(b) is not contravened as written notice of the rental increase was provided not less than six months before the effective date.

17. The rental increase was therefore not contrary to the *Act* and the tenants' claim fails.

Issue 2: Security Deposit

18. S. 14(11) of the Act states that where a tenant makes an application for the return of a security deposit and serves it upon the landlord, the landlord has 10 days to make a claim for all or part of the deposit. In the present case, the landlord has no application before this tribunal. The security deposit must therefore be returned, save for a fee the tenants cede is legitimate – approximately two hours of cleaning at \$30/hour for a total of \$60.
19. The security deposit in this case was \$825 and was paid in 2019. S. 14(7) of the Act states that a landlord shall credit interest to the tenant on the full amount or value of the security deposit, at the rate prescribed by the regulations, during the time the security deposit is held by the landlord. For the years 2019-2023, the regulations prescribed an interest rate of 0%. In 2024, the regulations prescribe a simple cumulative interest rate of 1% annual. Calculated to the date of the hearing, this results in a total interest of \$5.79.
20. The security deposit and interest subtract the \$60.00 fee result in a total owing to the tenants of \$770.79.

Decision

21. The tenants' claim for a refund of rent fails.
22. \$770.79 of the security deposit must be returned to the tenants.
23. The tenants were partially successful in their application and are therefore entitled to recover their reasonable hearing expenses. In this case, they claim the \$20.00 application fee and \$25.00 for the services of a Commissioner of Oaths, for which a receipt was provided (T#8).

Summary of Decision

24. The landlord shall pay to the tenants \$815.79 as follows:

Security Deposit and Interest.....	\$770.79
Hearing expenses.....	\$45.00
 Total.....	 \$815.79

24-October-2024

Date


Seren Cahill
Residential Tenancies Office