

## **Residential Tenancies Tribunal**

Application 2024-0619-NL & 2024-1149-NL

Pamela Pennell  
Adjudicator

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### **Introduction**

1. Hearing was called at 1:47 p.m. on 16-January-2025.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.
3. The respondent and counter applicant, [REDACTED] .., represented by [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.

### **Preliminary Matters**

4. The tenant submitted an affidavit with her application stating that she had served the landlord with the notice of hearing electronically by email to: [REDACTED] on 3-January-2025 (TT#1). The landlord confirmed receipt of the document on that date. The landlord had submitted their own application and provided an affidavit stating that they had served the tenant earlier with the notice of hearing electronically by email to: [REDACTED] on 18-December-2024 (LL#1). The tenant confirmed receipt of the document on that date. In accordance with the *Residential Tenancies Act. 2018*, this is good service.
5. There was a written rental application that had been approved and the tenant was expected to take possession of the unit dated 1-June-2024, however the tenant never moved into the unit. Rent would have been \$1500.00 per month, due on the first day of each month. A security deposit of \$1125.00 was paid on 8-May-2024 and is in the landlord’s possession.

### **Issues before the Tribunal**

6. The tenant is seeking:
  - Refund of security deposit \$1125.00.
7. The landlord is seeking:
  - Rent paid \$1500.00
  - Utilities paid \$113.65
  - Hearing expenses \$20.00
  - Security deposit applied against monies owed \$1125.00.

## **Legislation and Policy**

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
9. Also, relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 14; Security Deposit.

### **Issue # 1: Rent paid \$1500.00**

#### Landlord's and Tenant's Positions

10. The landlord's representative testified that the tenant completed a rental application and paid her security deposit in early May 2024 with the commitment to rent the unit effective 1-June-2024. The landlord's representative testified that the tenant advised her on 13-May that she was unable to move in. The landlord stated that they were unable to rent the unit to another tenant until July 2024 and they are seeking lost rental income for June in the amount of \$1500.00. The tenant did not dispute that she entered into a rental agreement with the landlord, however she testified that she was unable to take possession of the property due to personal reasons which involved having to move out of the *City*. The tenant stated that she gave the landlord notice on 13-May that she could not move in, and the tenant stated that she felt that the landlord had plenty of time to find another tenant for the month of June.

#### **Analysis**

11. I accept the tenant's testimony that a situation occurred that was out of her control, and as a result, she was unable to fulfill her obligation to rent the unit on 1-June-2024. I asked the landlords representative if they made every effort to mitigate their losses and she responded that they did and stated that they were successful in securing a suitable tenant for 1-July-2024. I find that a landlord should not have to incur any financial loss due the actions of a tenant even if the actions are out of the tenant's control and for that reason, I find that the tenant is responsible for the loss of rental income to the landlord for the month of June 2024 in the amount of \$1500.00.

#### **Decision**

12. The landlord's claim for *rent paid* succeeds in the amount of \$1500.00.

### **Issue # 2: Utilities Paid \$113.65**

#### Relevant Submission

13. The landlord testified that *Utilities* are outstanding for the month of June in the amount of \$113.65 and they are seeking utilities to be paid in full. The landlord submitted a utilities ledger to support the claim (LL#2). See copy of utilities ledger below:

Item #	Description of Utility Charges	Compensation Claimed
1.	June 1 <sup>st</sup> – 21 <sup>st</sup> , 2024 NL Power Bill	\$87.99
2.	June 22 <sup>nd</sup> – 30 <sup>th</sup> , 2024 NL Power Bill	\$25.66
<b>Total</b>		<b>\$113.65</b>

#### Landlord's and Tenant's Positions

14. The landlord's representative testified that the tenant was responsible for 66% of the utility bills for the month of June 2024 and they are seeking payment in the amount of \$113.65. The landlord submitted a copy of the utility bills from *NL Power* to support the claim (LL#3). The tenant did not dispute that she had agreed to pay 66% of the utility bills had she taken possession of the property, however she disputes that she should be responsible for the utilities when she did not reside there.

#### **Analysis**

15. It has been decided that the tenant is responsible for payment of rent for the month of June as per paragraph 11 above, and as such the tenant is also responsible for the utilities for that period. The landlord was able to show the outstanding utility amount for the full month of July by presenting utility bills from *NL Power*. I find that the tenant is responsible for 66% of the cost of the utility bill for the month of June 2024 in the amount of \$113.65.

#### **Decision**

16. The landlord's claim for *Utilities Paid* succeeds in the amount of \$113.65.

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

17. The landlord paid an application fee of \$20.00 to *Residential Tenancies* and submitted a copy of the receipt to support the claim (LL#4). In accordance with Section 12-1 of the *Residential Tenancies Policy Manual*, filing fees can be claimable costs. As the landlord's claim for losses has been successful, I find that the tenant shall pay the landlord's hearing expenses.

#### **Decision**

18. The landlord's claim for *hearing expenses* succeeds in the amount of \$20.00.

#### **Issue # 4: Refund of Security Deposit Security Deposit to be applied against monies owed**

#### **Analysis**

19. Section 14 of the *Residential Tenancies Act, 2018* deals with security deposits, and the relevant subsections state:

#### **Security deposit**

14. (8) A security deposit is not an asset of the landlord but is held by the landlord in trust and may be used, retained or disbursed only as provided in this section.

- (9) Not later than 10 days after the tenant vacates the residential premises, the landlord shall return the security deposit to the tenant unless the landlord has a claim for all or part of the security deposit.
- (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.
- (11) Where a tenant makes an application under paragraph (10)(b), the landlord has 10 days from the date the landlord is served with a copy of the tenant's application to make an application to the director under paragraph (10)(b).
- (12) A landlord who does not make an application in accordance with subsection (11) shall return the security deposit to the tenant.

20. The landlord's claim for losses has been successful as per paragraphs 12, 16 and 18 and as such the security deposit shall be applied against monies owed. Pursuant to the *Residential Tenancies Act, 2018* the landlord must pay interest on a security deposit to a tenant for the entire period that the landlord has had the security deposit. The interest is calculated as simple interest and is not compounded. The annual interest rate for 2024 and 2025 is 1%.

### **Decision**

21. The landlord's claim to have the *security deposit applied against monies* owed succeeds.

22. The tenant's claim for a *refund of security deposit* does not succeed.

### **Summary of Decision**

23. The tenant's claim for *refund of security deposit* does not succeed.

24. The tenant shall pay the landlord \$500.81 as follows:

Rent paid .....	\$1500.00
Utilities paid .....	113.65
Hearing expenses .....	20.00
<b>Less security deposit &amp; interest .....</b>	<b>1132.84</b>
 Total .....	 <u>\$500.81</u>

February 7, 2025

Date

Pamela Pennell, Adjudicator  
Residential Tenancies Office