

Residential Tenancies Tribunal

Application 2024-0707-NL & 2024-0765-NL

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:47 p.m. on 2-October-2024.
2. The applicants, [REDACTED] (applicant 1) and [REDACTED] (applicant 2), hereinafter referred to as "the tenants" attended by teleconference.
3. The respondent and counter applicant, [REDACTED], and representative [REDACTED], hereinafter referred to as "the landlord" attended by teleconference.

Preliminary Matters

4. The tenants submitted an affidavit with their application stating that they had served the landlord with the notice of hearing electronically by email to; [REDACTED] on 17-September-2024 (TT#1). The landlord confirmed receipt of the document on that date. The landlord countered the claim and submitted an affidavit stating that she served the tenants with the notice of hearing electronically by email to; [REDACTED] and [REDACTED] on 19-September-2024 (LL#1). The tenants confirmed receipt of the documents on that date. In accordance with the *Residential Tenancies Act. 2018*, this is good service.
5. There was a written term rental agreement that commenced on 1-July-2022 and upon expiration, a new term agreement was signed to commence on 1-July-2023. The tenants vacated the unit on July 12, 2024. Rent was \$1450.00 per month, due on the first of each month. A security deposit of \$1000.00 was paid on 8-June-2022 and is in the landlord's possession.

Issues before the Tribunal

6. The tenants are seeking:
 - Refund of security deposit \$1000.00 plus interest.
7. The landlord is seeking:
 - Validity of termination notice
 - Rent paid \$888.00
 - Utilities paid \$21.28
 - Hearing expenses \$20.00
 - Security deposit applied against monies owed \$1000.00.

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, Section 18; Notice of termination of a rental agreement and Section 34: Requirements of notices.

Item # 1: Validity of Termination Notice

Landlord's and Tenant's Position

10. The landlord testified that the tenants vacated the unit on 12-July-2024 without giving a proper termination notice. The landlord stated that the tenants were scheduled to move out on 31-August-2024 as per a standard termination notice given by her on 7-May-2024. The landlord testified that she received an email from the tenants on 18-June-2024 stating that they will be vacating the unit on 12-July. The landlord submitted a copy of the email to support the claim (LL#2). The tenants did not dispute that they provided their notice of termination to the landlord on that date, nor did they dispute that they gave the notice electronically by email.

Analysis

11. Section 18 of the *Residential Tenancies Act, 2018*: Notice of termination of rental agreement states:

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

(c) not less than 2 months before the end of the term where the residential premises is rented for a fixed term.

12. Section 34 of the *Residential Tenancies Act, 2018*: Requirements for Notices states:

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 the Act under which the notice is given*

13. Applicant 1 did not dispute that the termination notice given to the landlord on 12-July was invalid as it did not give a full rental period notice, however applicant 2 disputed that they were required to give the landlord a one-month notice when the landlord had already terminated the tenancy and put them in a situation whereby they were forced to secure a new place. Applicant 2 stated that her interpretation of the Act is that they were no longer in a tenancy relationship with the landlords and she made reference to Section 8(3)(a) of

the Act which states: *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 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)*. I accept that there are different interpretations of the Act however in this situation, a notice of termination of the rental agreement **had** been given and even it had not been given, I find that the tenants did not comply with Sections 18 and 34 of the Act as stated above.

Decision

14. The termination notice given by the tenants on 18-June-2024 was not a valid notice.

Issue # 2: Rent paid \$888.00

Landlord's and Tenant's Positions

15. The landlord testified that the tenants paid a prorated amount of rent for the period of July 1-12 while they were residing in the unit in the amount of \$562.00 and the landlord stated that she is seeking rent to be paid in full for the month of July as the tenants gave an invalid termination notice. Applicant1 did not dispute that rent is due in full for July, however applicant 2 disputed that they should be required to pay rent for the period they did not reside in the unit and presented the same argument as stated above in paragraph 13.

Analysis

16. It has been decided that the tenants gave an improper termination notice as per paragraph 14 above and for that reason, rent is required to be paid in full for the month of July. I find that the tenants shall pay the remainder of rent due for the month of July in the amount of \$888.00.

Decision

17. The landlord's claim for *rent paid* succeeds in the amount of \$888.00.

Issue # 3: Utilities Paid \$21.28

Relevant Submission

18. The landlord testified that the utilities were transferred back into her name on July 1, 2024 and she is seeking outstanding utilities to be paid in the amount of \$21.28 for the month of July. The landlord submitted a copy of the utilities bill from *NL Power* to support the claim (LL#3).

Landlord's and Tenant's Positions

19. The landlord testified that the utilities were transferred back into her name on 1-July and she is seeking payment in the amount of \$21.28. Applicant 1 did not dispute that they are responsible for the utility bill, nor did he dispute the amount sought by the landlord. Applicant 2 disputed that they should pay the utility bill as it was dated for July 12-23, which is a period when they did not reside in the unit.

Analysis

20. It has been decided that the tenants are responsible for payment of rent for the month of July as per paragraph 17 above, and as such the tenants are also responsible for the utilities for that period. The landlord was unable to show the outstanding utility amount for the full month of July and presented a utility bill from *NL Power* for the period of July 12-23 in the amount of \$21.28. I find that the tenants are responsible for the cost of utilities for the month of July, however the landlord failed to show the total cost of the utilities for that month, and for that reason, I find that the tenants are responsible for the outstanding partial amount as per the utility bill in the amount of \$21.28.

Decision

21. The landlord's claim for *Utilities Paid* succeeds in the amount of \$21.28.

Issue # 4: Hearing expenses \$20.00

22. 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 tenants shall pay the landlord's hearing expenses.

Decision

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

Issue # 5: Refund of Security Deposit plus interest Security Deposit to be applied against monies owed

Analysis

24. 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.

25. The landlord's claim for losses has been successful as per paragraphs 17, 21 and 23, 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 for 2022 - 2023 was 0% and is currently 1% for 2024.

26. The tenants claim for refund of security deposit partially succeeds.

Decision

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

28. The tenant's claim for a *refund of security deposit* partially succeeds.

Summary of Decision

29. The termination notice given by the tenants on 18-June-2024 was not a valid notice.

30. The tenants shall pay the landlord \$0.00 as follows:

Rent paid	\$888.00
Utilities paid	21.28
Hearing expenses	20.00
Less security deposit	929.28
 Total	 <u>\$0.00</u>

31. The landlord shall refund the remainder of the security deposit plus interest to the tenants in the amount of \$78.29.

October 10, 2024

Date


Pamela Pennell, Adjudicator
Residential Tenancies Office