

Residential Tenancies Tribunal

Application 2024-0736-NL

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:48 p.m. on 26-September-2024.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.
3. The respondent, [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 14-September-2024 (TT#1). The landlord confirmed receipt of the document on that date. In accordance with the *Residential Tenancies Act, 2018* this is good service.
5. There was a term rental agreement that commenced on 1-October-2023. The tenant vacated the unit on 15-July-2024. Rent was \$1800.00 per month, due on the first of each month. A security deposit of \$1350.00 was paid on 9-September-2023 and is in the landlord’s possession.

Issues before the Tribunal

6. The tenant is seeking:
 - Rent refunded \$232.26
 - Refund of security deposit plus interest \$1357.30
 - Hearing expenses \$20.00

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in Sections 46 and 47 of the *Residential Tenancies Act, 2018*.
8. Also, relevant and considered in this decision is the following section of the *Residential Tenancies Act, 2018*: *Section 14*: Security deposit. Also, relevant and considered in this decision is the following section of the *Residential Tenancies Policy Manual*: *Section 12-1*: Recovery of Costs.

Item # 1: Rent refunded \$232.26

Tenant's Position

9. The tenant testified that she entered into a rental agreement with the landlord to take possession of the unit on 1-October-2023 and she submitted a copy of the rental agreement in support of the claim (TT#2). The tenant testified that she did not receive a key to the unit until 4-October around 5-6:00pm and she is seeking rent to be refunded for the period of October 1-4 at a prorated amount of \$232.26.

Landlord's Position

10. The landlord did not dispute that the tenant had not been given the key to the unit on 1-October, however he stated that the tenant had access to the unit to move some of her belongings in.

Analysis

11. Based on the testimony of both parties, I accept that the tenant was not given the key to the unit on 1-October which was the commencement date of the tenancy. I asked the landlord when he provided the tenant with the key to the unit and he responded that it could have been the 3-October as the unit had not been cleaned prior to that date. As the landlord was uncertain as to when the tenant received the key, I will accept the tenant's testimony that it was 5:00pm on 4-October, and as such I will award the tenant a refund of rent for 3.5 days. A daily rate of rent is calculated as follows: $\$1800 \times 12 \text{ mths} = \21600 per month / 366 days = \$59.02 per day. I find that the landlord shall refund rent to the tenant at a prorated amount of \$206.57.

Decision

12. The tenant's claim for *refund of rent* succeeds in the amount of \$206.57

Issue # 2: Refund of security deposit plus interest \$1357.30

13. Section 14 of the *Residential Tenancies Act, 2018* states:

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).

14. The landlord did not refund the security deposit to the tenant within the 10-day timeframe as outlined in Section 14 above. The landlord confirmed that the security deposit was paid on 9- Septembe-2023 and is still in his possession. As the security deposit is not an asset of the landlord, I find that the landlord shall refund the security deposit plus interest to the tenant.

15. Pursuant to the *Residential Tenancies Act, 2018* the landlord must pay interest on a security deposit to a tenant(s) 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 2023 was 0% and is currently 1% for 2024.

Decision

16. The tenant's claim for *refund of security deposit* plus interest succeeds.

Issue # 3: Hearing expenses \$20.00

17. The tenant paid an application fee of \$20.00 to *Residential Tenancies* and is seeking to be reimbursed for the cost. The tenant submitted a copy of the receipt to support the claim (TT#3). In accordance with Section 12-1 of the *Residential Tenancies Policy*, claimable costs may include the filing fee. As the tenant's claim for losses has been successful, I find that the landlord is responsible for the hearing expenses.

Decision

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

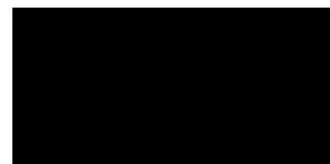
Summary of Decision

19. The landlord shall pay the tenant \$1566.53 as follows:

Rent refunded.....	\$206.57
Refund of security deposit	1350.00
Interest	9.96
Total	<u>\$1566.53</u>

October 8, 2024

Date



Pamela Pennell, Adjudicator
Residential Tenancies Office