

Residential Tenancies Tribunal

Application 2024-0798-NL

Oksana Tkachuk
Adjudicator

Introduction

1. Hearing was called at 1:51 p.m. on 6-November-2024.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant”, attended via teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the landlord”, attended via 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 via email on 23-September-2024 (TT#1). The landlord confirmed receiving notice of the hearing on that date. In accordance with the *Residential Tenancies Act, 2018* this is good service.
5. There was verbal month-to-month rental agreement which commenced on 1-June-2024. Rent was \$600.00 per month, due on the first of each month. The tenant vacated on 3-August-2024. A security deposit of \$450.00 was collected on 24-May-2024 and is in the landlord’s possession.
6. The tenant amended the application to include hearing expenses of \$20.00.

Issues before the Tribunal

7. The tenant is seeking:
 - Refund of rent \$300.00;
 - Refund of Security deposit \$450.00;
 - Hearing expenses \$20.00.

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 16: Rental Increase, and following sections of the *Residential Tenancies Policy Manual*: Section 12-1: Costs and Section 13-2: Rental Increase and Rebates.

Issue #1: Refund of rent \$300.00.

Tenant's Position

10. The tenant is seeking \$300.00 rent refund, claiming that the landlord violated their rental agreement.

11. The tenant stated that on 12-July-2024 the landlord moved into the unit, despite a prior agreement that only three tenants would occupy a three-bedroom unit and share common areas. The tenant submitted a photograph of the shared area to support her claim (TT#2). With the landlord's arrival as fourth occupant, the living room was occupied by another person, which was not a part of the original agreement. The tenant reported that the landlord's presence led to a decline in the unit's cleanliness and maintenance. Since 12-July, the unit has reportedly been messy and unclean, contrary to the landlord's assurances of a well-kept living space.

12. Furthermore, the tenant stated that while the premises were agreed to be pet-friendly, the tenant noted that the landlord smoked in the house and frequently left the door open, resulting in her cats running away three times. The tenant stated that since the landlord moved in, the unit became a not pet-friendly and pet-safe place. The tenant also alleged that the landlord mistreated her cat and called her derogatory names, creating a hostile living environment. The tenant stated, "The landlord made my life hell".

13. Additionally, the tenant testified that on 12-July-2024 she received a message from the landlord telling her to leave the unit by 12-August-2024. The tenant submitted copy of that message to support her claim (TT#3,4). The tenant stated that she believes that it was not a proper termination notice.

14. Consequently, the tenant is seeking a refund for half of July's rent due to these conditions and the breach of the rental agreement.

Landlord's Position:

15. The landlord disputed tenant's request for a refund of rent. The landlord stated that upon his arrival, he occupied one of the bedrooms, and another tenant moved out, so no one was staying in the shared area. The landlord declined calling the tenant names, mistreating her cats. The landlord stated that the tenant called police multiple times "because she was dramatic". The landlord also asserted that his termination notice was valid, as he believes he was only required to provide the tenant with one month's notice to vacate.

Analysis

16. Section 16 (5) of the Residential Tenancies Act states:

16. Rental increase

(5) Where a landlord discontinues a service, privilege, accommodation or benefit or a service, privilege, accommodation or benefit is unavailable for a period of time, and the discontinuance or unavailability results in a reduction of the tenant's use and enjoyment of the residential premises, the value of the

discontinued service, privilege, accommodation or benefit is considered to be an increase in the amount of rent payable.

17. I accept landlord's and tenant's testimony. The tenant confirmed that another occupant was indeed staying in the shared places since 12-July to 3-August, using the couch as a sleeping space, and providing the photograph showing evidence of someone occupying the shared area. When I questioned the landlord about the signs of occupancy in the shared area and the personal belongings in the room, he denied anyone was using the area; however, he agreed that the suitcase, clothing, and personal items were all his own belongings.
18. Based on the testimony and evidence, I find the tenant's testimony to be credible and consistent. I conclude that the shared living room was, in effect, used as additional living space for another occupant, altering the agreed-upon conditions of the rental agreement. According to the Section 16 (5) of the *Act* as stated above and Section 13-2 of the *Residential Tenancies Policy*, a tenant may be entitled to a rental rebate if a rental increase occurs outside the permitted manner under the *Act*. I accept that if previously available shared accommodation – such as a common living room – becomes unavailable and results in a reduction of the tenant's use and enjoyment of the residential premises, the value of this lost accommodation shall be treated as a rental increase. In this case, I find that the tenant lost access to half of the rental accommodation, as she could only use her room and not the shared living room. Given that the monthly rent was \$600.00, I accept that since 12-July, the shared living room was effectively unavailable, as the landlord effectively made part of agreed shared accommodations unavailable for the tenant. Calculating based on the daily rate of \$19.67, the tenant should only be charged half of daily rate, amounting to \$9.83 per day for the 20 days from 12-July to 31-July. Therefore, I find that the tenant is entitled to a total rebate of \$196.60.

Decision

19. The tenant's claim for refund of rent succeeds in the amount of \$196.60.

Issue #2: Hearing expenses \$20.00.

Relevant Submission

20. The tenant paid \$20.00 for the application fee and is seeking reimbursement. The tenant submitted a copy of the receipt to support the claim (TT#5).

Analysis

21. In accordance with Section 12-1 of the *Residential Tenancies Policy Manual: Costs*, and as the tenant's claim was successful, the tenant will be awarded \$20.00 to cover hearing expenses.

Decision

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

Issue # 3: Refund of Security deposit \$450.00
Security deposit to be applied against any monies owed \$450.00

Analysis

23. 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.

24. In accordance with section 14 of the *Act* as stated above, the landlord did not return the security deposit within the 10-day time frame, the landlord has failed to make application to the Director to retain the security deposit. The tenant was able to show that she paid the security deposit and for those reasons I find that the landlord shall refund the security deposit to the tenant.

25. Pursuant to the *Residential Tenancies Act, 2018* the landlord must pay interest on a security deposit to the tenant for the entire period that the landlord has had the security deposit. The annual interest is 1% for 2024.

Decision

26. The tenant's claim for refund of security deposit plus interest succeeds in the amount of \$451.97.

Summary of Decision

27. The landlord shall pay to the tenant \$668.57 as follows:

Refund of rent	\$196.60
Hearing expenses	\$20.00
Security Deposit plus interest	\$451.97
 Total.....	 \$668.57

November 15, 2024

Date

Oksana Tkachuk, Adjudicator
Residential Tenancies Office