

Residential Tenancies Tribunal

Application 2024-0802-NL

Oksana Tkachuk
Adjudicator

Introduction

1. Hearing was called at 9:10 a.m. on 12-November-2024.
2. The applicant 1, [REDACTED], attended by teleconference and represented applicant 2 [REDACTED], hereinafter referred to as "the tenants".
3. The respondent 1, [REDACTED] attended by teleconference and represented respondent 2 [REDACTED], hereinafter referred to as "the landlords".

Preliminary Matters

4. The tenants submitted an affidavit with their application stating that they had served the landlords with the notice of the hearing electronically via email to: [REDACTED] on 6-September-2024 (TT#1). The respondent 1 agreed that both respondents received the notice of the hearing on that date. In accordance with the *Residential Tenancies Act, 2018* this is good service.
5. There was written a fixed term rental agreement which commenced on 1-June-2023 with ending date of 31-August-2024. The tenants moved out on 31-July-2024. Rent was \$1600.00 per month due on the first of each month. A security deposit of \$1200.00 was collected on 8-December-2023 and portion of \$265.00 is in landlord's possession.

Issues before the Tribunal

6. The tenant is seeking:
 - Refund of Security Deposit of \$265.00.
 - Late fees \$100.00.

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 Policy*: Section 2-4 Deposits, Payments and Fees and Section 14 of the *Residential Tenancies Act, 2018*: Security Deposit.

Issue # 1: Refund of Security deposit \$265.00

Tenant's Position:

9. The tenant 1 stated that the landlords did not return the full amount of security deposit upon move-out. The tenant explained that they notified the landlord 2 on 5-June-2024 of their intention to sublet the rental unit, as they planned to leave on 31-July-2024 and had already found a suitable tenant. The tenants submitted a proof of sent email to the landlord with details about sublets (TT#2). The tenant testified that landlord 2 informed them during their conversation that he was not interested in accepting new tenants, as he intended to carry out renovations. The tenant stated that for those reasons both parties ultimately agreed that the tenants would vacate on 31-July-2024 so the landlords will start renovations. The tenant submitted a copy of email from landlord to support their claim (TT#3).
10. The tenants are seeking a remaining \$265.00 from the original \$1200.00 security deposit, which the landlord initially calculated and withheld, stating that they gave not a proper termination notice. The tenants submitted a copy of landlord's email to support their claim (TT#4). The tenant clarifies that they did not provide a termination notice, as their intention was not to end the fixed-term rental agreement early but to find a sublet. However, since the landlord expressed a desire to proceed with renovations and agreed to their move-out date of 31-July, the tenant believes they are entitled to have the full amount of security deposit refunded.

Landlord's position:

11. The landlord 1 disputed the return of the remaining \$265.00 of the security deposit, as they had a fixed-term rental agreement, and the tenants provided an improper termination notice on 5-June-2024.

Analysis

12. 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).

13. I accept the tenant's 1 and landlord's 1 testimony and the supporting evidence. I inquired about when the security deposit was refunded to the tenants and the tenant 1 responded that the landlord 2 refunded \$935.00 on 9-August-2024. I questioned the landlord 1 about whether landlord 2 had agreed to the tenant's proposal to move out on 31-July as he intended to renovate the unit. Landlord 1 was unable to provide specific answer, as she stated that she was not present during the conversation between landlord 2 and the tenants. Landlord 1 stated that landlord 2 was the primary contact and she never communicate with the tenants before. The tenant 1 confirmed that they only communicated with landlord 2 during the tenancy. For those reason I accept the tenant's 1 testimony, as she stated she was part of that conversation and confirmed that the both parties agreed to their move-out date of 31-July to allow renovations and stated that the landlords began renovations on 31-July-2024, the day they moved out. Based on the tenant's 1 testimony, I accept that the verbal agreement to vacate on 31-July was reached between the tenants and the landlord 2, who was the only landlord they communicate with. Therefore, I find that the full amount of the security deposit should have been refunded to the tenants within 10 days after the tenancy ended.

Pursuant to the *Residential Tenancies Act, 2018* the landlords must pay interest on a security deposit to the tenants for the entire period that the landlords have had the security deposit. The interest is calculated as simple interest and is not compounded. The annual interest in 2024 is 1%. Consequently, I find that the landlords should refund the remaining \$265.00 of the security deposit plus interest to the tenants.

Decision

14. The tenant's claim for refund of security deposit succeeds.

Issue #2: Late fees \$100.00.

15. *Residential Tenancies Policy 2-4; Deposits, Payments and Fees* states:

Late payment fee:

When rent is not paid on time, a landlord may charge a late fee of \$5.00 for the first day rent is in arrears and \$2.00 for each additional day that the rent remains in arrears in any consecutive number of rental periods up to a maximum of \$75.00.

Tenant's Position:

16. The tenant 1 stated that they are seeking late fees of \$100.00 as the security deposit was not refunded in full amount what caused financial instability.

Landlord's position:

17. The landlord disputed that they are responsible for the late fees.

Analysis

18. The tenants are seeking late fees of \$100, claiming that the partial refund of the security deposit caused financial instability. However, late fees can only be charged when rent payments remain in arrears. The issue of the partial security deposit refund does not fall

within this category and therefore cannot be evaluated under the provisions allowing for late fees. I find that the tenants claim for late fees of \$100.00 does not succeed.

Decision

19. The tenant's claim for late fees does not succeed.

Summary of Decision

20. The landlords shall refund the tenants \$267.30 of security deposit plus interest.

November 15, 2024

Date

Oksana Tkachuk, Adjudicator
Residential Tenancies Office