

Residential Tenancies Tribunal

Application 2024-0804-NL

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:49 p.m. on 8-October-2024.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference. [REDACTED] attended as a support person.

Preliminary Matters

4. The landlord submitted an affidavit with his application stating that he had served the tenant with the notice of hearing electronically by email to; [REDACTED] on 29-August-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 term rental agreement that commenced on 1-January-2024. The tenant vacated the unit on 29-May-2024. Rent was \$1000.00 per month due on the first day of each month. A security deposit of \$750.00 was paid on 28-December-2023 and is in the landlord’s possession.
6. The landlord amended the application to include *hearing expenses* and the disposition of the *security deposit* shall be dealt with in this decision.

Issues before the Tribunal

7. The landlord is seeking:
 - a. Other \$1000.00
 - b. Security deposit applied against monies owed \$750.00
 - c. 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*. Also, relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 14: Security deposit and Section 18: Notice of termination of rental agreement. Also, relevant and considered in this decision is the following section of the *Residential Tenancies Policy Manual*: Section 12-1: Costs.

Issue # 1: Other \$1000.00

Landlord's and Tenant's Positions

9. The landlord testified that he entered into a fixed term rental agreement with the tenant on 1-January-2024 to end on 31-December-2024. The landlord stated that the tenant breached the contract by leaving early on 29-May-2024. The landlord made reference to paragraph 53 of the rental agreement which states: *If the tenant moves out prior to the natural expiration of this lease, a re-rent levy of \$1000.00 will be charged to the tenant* (LL#2). The landlord stated that the levy fee is in the agreement to ensure that he does not incur any loss of rental income. The tenant did not dispute that he vacated the unit early at the end of May and stated that he is a new Canadian and he had to move to another area for employment. The tenant also stated that he provided the landlord with 58 days' notice which is enough time to secure a new tenant. The landlord is seeking the \$1000.00 levy fee to cover his loss of income for the month of June.

Analysis

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

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 ...

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

11. The tenant entered into a term agreement with the landlord, whereby he agreed to pay a levy fee of \$1000.00 in the event that he breached the contract. The tenant's notice was not with cause, that is, the tenant was not forced to end the tenancy due to the actions of the landlord. The tenant stated that he had to move for employment and the landlord agreed to discontinue the rental contract at the end of June. I asked the landlord if he mitigated his losses, and he stated that the tenant sent him notice of termination on 3-April and he advertised the unit for rent on 15-April and he also stated that he secured a new tenant on 23-June to take possession on 1-July. I asked the landlord why it took so long to re-rent the unit given the need for rental units in the community and he responded that he is careful as to whom he rents to and wanted to complete employment checks.

12. Landlords should not incur any financial loss due to the actions of a tenant(s). The tenant breached the rental contract by giving an invalid termination notice on 3-April and the tenant also agreed to the terms of the rental agreement whereby he would pay a levy fee of \$1000.00 if he vacated the unit earlier than the end date of the term. With regards to the tenant's argument that he gave sufficient notice, I find that in accordance with Section 18 as stated above, the tenant did not give sufficient notice. I also accept the landlord's testimony that he agreed to discontinue the tenancy at the end of June, and therefore should have been paid rent up to that point. For those reasons, I find that the tenant gave an invalid termination notice and the levy fee of \$1000.00 sought by the landlord to cover his loss of rent for June is an acceptable charge as per the rental agreement. I find that the tenant is responsible for the levy fee of \$1000.00.

Decision

13. The landlord's claim for *Other* succeeds in the amount of \$1000.00.

Issue # 2: Hearing Expenses \$20.00

14. The landlord paid an application fee of \$20.00 to *Residential Tenancies* and he submitted a copy of the receipt to support the claim (LL#3). In accordance with Section 12-1 of the *Residential Tenancies Policy Manual*, filing fees are allowable costs. As the landlord has been successful in his claim for losses, the tenant is responsible for the hearing expenses.

Decision

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

Issue # 3: Security deposit applied against monies owed.

Analysis

16. 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.*
14. (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.*
14. (10) *Where a landlord believes he or she has a claim for all or part of the security deposit,*
 14. (a) *the landlord and tenant may enter into a written agreement on the disposition of the security deposit; or*
 14. (b) *the landlord or the tenant may apply to the director under section 42 to determine the disposition of the security deposit.*
14. (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).*

17. The landlord's claim for losses has been successful as per paragraphs 13 and 15, and as such the security deposit shall be applied against monies owed.

Decision

18. The landlord's claim for *security deposit to be applied against monies owed* succeeds.

Summary of Decision

19. The tenant shall pay the landlord \$264.20 as follows:

Other (levy fee)	\$1000.00
Hearing expenses	20.00
Less security deposit & interest.....	755.80

Total	\$264.20
-------------	----------

October 15, 2024

Date



Pamela Pennell, Adjudicator
Residential Tenancies Office