

Residential Tenancies Tribunal

Application 2024-0855-NL

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 9:15 AM on 7 November 2024 via teleconference.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as “the tenants”, attended the hearing.
3. The respondent, [REDACTED], hereinafter referred to as “the landlord”, briefly attended the hearing, but did not remain.

Preliminary Matters

4. The landlord was initially not present at the hearing as my attempts to contact her by telephone prior to the hearing by telephone (709.237.2215) at 9:04 AM and 9:10 AM were unsuccessful, and 15 minutes grace was afforded. Shortly after the hearing started, while affirming appropriate service of documentation the landlord joined and was sworn in to provide testimony. While proceeding to confirm service of documentation the landlord stated that she could not “hear out of one ear” and would come into the office and “meet them [the tenants] in person the old school way”. The landlord was advised that the hearing was by teleconference. While continuing to affirm service of documents, the landlord terminated the call and did not return to the hearing. It is noted that in accordance with Residential Tenancies Policy 11-004, requests for accommodations will be considered and reasonable accommodations may be approved where applicable. Requests for accommodations should be submitted in writing as soon as possible or at least 5-days prior to the hearing, with appropriate supporting documentation as required. No such request was on file.
5. This Tribunal’s policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of hearing 10 clear days prior to the hearing date and, where the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may

proceed in the respondent's absence so long as he has been properly served. The tenants submitted an affidavit with their application stating the landlord was served with the notice of hearing by registered mail ([REDACTED]) on 20 October 2024 (T#1). In accordance with the *Residential Tenancies Act, 2018* this is good service. As the landlord was properly served, and as any further delay in these proceedings would unfairly disadvantage the tenants, I proceeded with the hearing in her absence.

6. There was a written monthly rental agreement (T#2) beginning on 1 May 2023, and the tenants vacated the premises on 15 August 2024. Rent was \$1200.00 per month, due on the 1st of each month. There was no security deposit collected on the tenancy.
7. The tenants amended their application to include hearing expenses of \$20.00.

Issues before the Tribunal

8. The tenants are seeking the following:
 - An order for refund of rent in the amount of \$1800.00
 - Hearing expenses in the amount of \$20.00

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in Sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).
10. Relevant and referred to in this decision is section 2 of the *Act*, and policies 11-004 and 12-001 of the *Residential Tenancies Program*.

Issue 1: Refund of Rent

11. The tenants are seeking a rental refund of 1 ½ months' rent for August and September 2024, in the amount of \$1800.00. The tenants testified that in July 2024, the landlord informed them her daughter would be returning to the province and would be moving into the rental premises. They then informed the landlord a "two-month notice" was required. The tenants testified that the landlord suggested to them she could issue a 3-day or 5-day notice as a means to have them vacate the rental premises. The tenants stated they were concerned with the lack of availability of rentals and were hopeful to remain at the rental premises for August and September 2024 to potentially allow time to secure another rental premises.
12. The tenants testified, as an attempt to maintain their living accommodations until they secured another location, they paid the landlord \$2400.00 on 1 August 2024

(T#3) for rent for both August and September 2024. Tenant1 testified that her husband informed the landlord this 1 August 2024 payment was for both August and September rent. Along with their application, the tenants supplied a rent ledger (T#4).

13. The tenants testified on 14 August 2024, they were personally served a termination notice with a move out date of 19 August 2024 (T#5). After receiving this termination notice, the tenants stated they vacated the rental premises on 15 August 2024.

Analysis

14. The tenants testified they had paid rent in the amount of \$2400.00 on 1 August 2024 for both August and September 2024. T#4 indicates this payment was made on 30 August 2024; however, during the hearing, they testified that this was a typo, and the payment was made on 1 August 2024, which they confirmed by providing a copy of the electronic transfer (T#3).
15. On 14 August 2024, the tenants stated they were personally issued a termination notice with a request to vacate the rental premises by 19 August 2024 (T#5). The tenants accepted the termination notice provided by landlord, requiring them to vacate the premises by 19 August 2024, and opted to vacate the premises on 15 August 2024; therefore, this decision will not determine the validity of this termination notice.
16. Section 2 (g) of the *Act* defines “rent” as “*money or other value paid, or required to be paid under a rental agreement, by a tenant to a landlord before or during the use or occupancy or occupancy of a residential premises for the use or occupation of the residential premises...*”. The landlord ended the tenancy on 19 August 2024, thereby ending the tenant’s ability to use or occupy the residential premises, effective 19 August 2024 (although they opted to vacate on 15 August 2024). As such, payment of rent was not required beyond 19 August 2024.
17. I accept the tenant’s testimony and evidence that they had paid rent for both August 2024 and September 2024 on 1 August 2024, and that they were not refunded the rent monies they had paid in advance upon termination of the rental agreement. I find that the tenants are not responsible to pay rent for 20 – 31 August 2024 and September 2024.
18. To determine the amount of rent refund for August 2024, a daily rate will have to be calculated. This calculation for rent for August 2024 is as follows: \$1200.00 X 12 months = \$14400.00 ÷ 366 days = \$39.34 X 12 days = \$472.08.

19. I find that the landlord is responsible to reimburse the tenants for the rent that was paid in advance in the amount of \$472.08 for August 2024, and \$1200.00 for September 2024.

Decision

20. The tenants claim for refund of rent succeeds in the amount of \$1672.08.

Issue 2: Hearing Expenses

21. The tenants paid a \$20.00 application fee and is seeking reimbursement. A copy of the receipt was provided (T#7).

Analysis

22. 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

23. The tenants claim from hearing expenses succeeds in the amount of \$20.00.

Summary of Decision

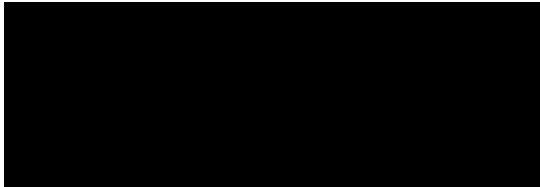
24. The landlord shall pay to the tenants \$1692.08, determined as follows:

- Refund of Rent.....\$1672.08
- Hearing Expenses.....\$20.00

- Total.....**\$1692.08**

25 March 2025

Date



Michael Reddy, Adjudicator
Residential Tenancies Office