

Residential Tenancies Tribunal

Application 2024-0860-NL

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:15 a.m. on 5-December-2024.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as “the tenants” attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the landlord” did not attend.

Preliminary Matters

4. The landlord was not present or represented at the hearing and I was unable to reach him by telephone at the start of the hearing. 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 the 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 that they had served the landlord with the notice of hearing electronically by email to; [REDACTED] on 14-November-2024 (TT#1). The tenants provided proof that the correct email address was used and proof that they sent the email (TT#2). 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 his absence.
5. There was a verbal rental agreement that commenced on 3-July-2024. The tenants never moved into the unit. Rent was \$850.00 per month, due on the first day of each month. A security deposit of \$500.00 was paid on 21-June-2024 and is in the landlord’s possession.

Issues before the Tribunal

6. The tenants are seeking:
 - Rent refunded \$850.00
 - Refund of security deposit plus interest \$500.00

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*. Also, relevant and considered in this decision is the following section of the *Residential Tenancies Act, 2018*: *Section 14*: Security deposit.

Item # 1: Rent refunded \$850.00

Tenant's Position

8. The tenants testified that they entered into a verbal rental agreement with the landlord over the telephone from [REDACTED] to rent the unit and take possession on 3-July-2024. The tenants testified that when they arrived on 3-July they noticed immediately that the unit was not as advertised to them and the photographs that they viewed in the advertisement listed were totally different than what the actual unit was. In addition, the tenants testified that the unit had a feeling of dampness and the smell associated with the dampness was prevalent throughout the unit. The tenant's stated that they feel that they were misled by the landlord, and they are seeking to have their first month's rent refunded.

Analysis

9. I accept that the unit was not acceptable to the tenants once they arrived from [REDACTED] on 3-July, and I accept that the only way they had to view the unit was through photographs as listed in the advertisement to rent the unit. I asked the tenants why they thought it was not the same unit as advertised and they responded that the photographs showed an open concept area which was not the case, and the stove was different. I asked the tenants if they could have had someone view the property on their behalf and they responded that they did not know anyone who could do that for them. Based on the tenant's testimony, I find that although the onus is on the tenants to know what they are entering into, the landlord falsified information to benefit himself.
10. Rent is required to be paid under a rental agreement by a tenant to a landlord before or during the use or occupancy of a residential premises for the use or occupation of a residential premises. I accept that the tenants did not use or occupy the residential premises as the unit was not what they expected and as such, rent was not required to be paid.
11. Based on the tenant's testimony, I accept that the unit advertised was not the same unit they viewed on 3-July. Also, I accept the tenant's testimony that the unit was damp and smelled of dampness and I asked the tenants if they made the landlord aware of their concerns regarding the dampness and the tenants responded that the landlord told them that they were overreacting. With regards to mitigation, I am unable to determine if the landlord was successful in mitigating his losses. As the landlord was not present to confirm whether or not he re-rented the unit, and as the landlord did not make an application for compensation for damages due to lost rent, I find that the tenants are not responsible to pay rent for the month of July. I find that the landlord is responsible to reimburse the tenants for the rent that was paid in advance for the month of July 2024 in the amount of \$850.00.

Decision

12. The tenant's claim for *refund of rent* succeeds in the amount of \$850.00.

Issue # 2: Refund of security deposit plus interest \$500.00

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 tenants within the 10-day timeframe as outlined in Section 14 above. 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 tenants.

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 2024 is 1%.

Decision

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

Summary of Decision

17. The landlord shall pay the tenants \$1352.14 as follows:

Rent refunded.....	\$850.00
Refund of security deposit	500.00
Interest	2.14
Total	<u>\$1352.14</u>

December 10, 2024
Date



Pamela Pennell, Adjudicator
Residential Tenancies Office