

Residential Tenancies Tribunal

Application 2024-0919-NL

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:03 a.m. on 13-November-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.
4. [REDACTED], witness for the applicant was called into the hearing.

Preliminary Matters

5. 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 28-October-2024 (LL#1). The affidavit was witnessed by a lawyer and the landlord submitted proof of the email address and proof of the sent email (LL#2). In accordance with the *Residential Tenancies Act, 2018* this is good service.
6. There was a written term rental agreement that was signed on 19-August-2024 whereby the tenancy was scheduled to commence on 1-September-2024. The tenant never took possession of the unit. Rent was \$2250.00 per month due on the first day of each month. A security deposit of \$1687.50 was paid on 21-August-2024 and is in trust with the real estate company representing the landlord.

Issues before the Tribunal

7. The landlord is seeking:
 - Rent paid \$1125.00.
 - Hearing expenses \$20.00
 - Security deposit applied against monies owed.

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 31: Abandonment of residential premises by tenant.

Issue # 1: Rent Paid \$1125.00

Landlord's Position

9. The landlord testified that the tenant never took possession of the unit on 1-September as agreed upon in the rental agreement and as such, never paid the first month's rent leaving him in a situation whereby he had to seek a new tenant and try to mitigate his losses. The landlord submitted a copy of the rental agreement to support the claim (LL#3). The landlord testified that he was able to secure a new tenant effective 15-September and he is seeking rent to be paid for the period of September 1-15 in the amount of \$1125.00.

Tenant's Position

10. The tenant did not dispute that he made the decision to not move into the unit on 1-September, however he disputed that he should be responsible for rent for the period of September 1-15 as he stated that the landlord changed the terms of the rental agreement after they both signed it. The tenant testified that the landlord demanded an *employment letter* from him as a condition of the rental agreement. The tenant stated that he was not able to comply with the landlord's request and felt the landlord was not going to allow him to move into the unit without it and he stated that he felt it was best to find a new place of residence.

Analysis

11. Subsection 31(2) (b) of the *Residential Tenancies Act, 2018* states:

Abandonment of residential premises by tenant

31.(2) A tenant is considered to have abandoned a residential premises where

(b) the rental agreement is not terminated in accordance with the Act or the rental agreement.

12. The landlord called his real estate agent into the hearing to discuss timelines in relation to correspondence between both parties. The witness testified that the tenant agreed to rent the unit on 9-August and the rental agreement was signed by both parties on 19-August. The witness testified that when they accepted the tenant's offer to rent the unit, they requested a *letter of employment* before signatures. The witness stated that she asked the tenant several times for the *letter of employment*, and she testified that she received a response from the tenant on 23-August stating that he was getting the letter that day. The witness also testified that on 27-August she asked again for the *letter of employment* and on the 28-August she received a text message stating that the tenant was unemployed and will not be able to honor the rental agreement. I accept that the tenant was fearful that he would not be able to move into the unit without the *letter of employment* and I asked the landlord and the witness if they ever used any language that would make the tenant believe that he would not be able to move into the unit if the *letter of employment* was not received and they both responded absolutely not.

13. I asked the tenant when he became unemployed, and he responded that he was never laid off from his job and he admitted to giving false information to the landlord to be able to get out off his lease. I asked the landlord if he made every attempt to mitigate his losses and he responded that he did and he stated that he was successful in securing a new tenant effective 15-September.
14. In accordance with Subsection 31(2) of the *Act* as stated above, the rental agreement was not terminated in accordance with the *Act* and although the tenant advised the landlord on 28-August that he would not be moving in on 1-September, I find that the tenant abandoned the unit. I accept that the rental agreement should have included the requirement of a *letter of employment*, however the fact that it didn't does not give the tenant the right to abandon a property. I find that the tenant entered into a binding contract, and he had an obligation to pay rent on 1-September as per the conditions of that contract. All other issues in relation to the tenancy could have been resolved through dispute resolution and for those reasons, I find that the tenant is responsible for the loss of rental income to the landlord for the period of September 1-15 in the amount of \$1125.00.

Decision

15. The landlord's claim for *rent paid* succeeds in the amount of \$1125.00.

Issue # 2: Hearing expenses \$20.00

16. The landlord paid an application fee of \$20.00 to *Residential Tenancies* and submitted a copy of the receipt to support the claim (LL#4). In accordance with Section 12-1 of the *Residential Tenancies Policy Manuel*, filing fees can be claimable costs. As the landlord's claim for losses has been successful, I find that the tenants are responsible for the hearing expenses.

Decision

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

Issue # 2: Security deposit applied against monies owed.

Analysis

18. 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).*

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

Decision

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

Summary of Decision

21. The tenant shall pay the landlord \$0.00 as follows:

Rent paid	\$1125.00
Hearing expenses	20.00
Less partial security deposit.....	1145.00
Total	\$0.00

November 18, 2024

Date



Pamela Pennell, Adjudicator
Residential Tenancies Office