

Residential Tenancies Tribunal

Application 2024-0921-NL & 2024-1122-NL

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:51 p.m. on 20-January-2025.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as "the tenants" did not attend. Authorized representative, [REDACTED] attended by teleconference (TT#1).
3. The respondent and counter applicant, [REDACTED], represented by [REDACTED], hereinafter referred to as "the landlord" attended by teleconference.

Preliminary Matters

4. 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 20-November-2024 (TT#2). The landlord confirmed receipt of the document on that date. The landlord countered the claim and testified that he had served the tenants with the notice of hearing electronically by email on 16-January-2025. The tenant's representative confirmed that the tenants received the documents on that date. The tenants were not served at least 10 days prior to the hearing day, however the tenants representative waived service and wished to proceed with the hearing. In accordance with the *Residential Tenancies Act. 2018*, this is allowable.
5. There was a verbal month-to-month rental agreement that commenced on 18-July-2024. The tenants vacated the unit on or about 3-September-2024. Rent was \$1100.00 per month, due on the first day of each month. A security deposit of \$825.00 was paid on 18-July-2024 and is in the landlord's possession.

Issues before the Tribunal

6. The tenants are seeking:
 - Refund of security deposit \$825.00.
7. The landlord is seeking:
 - Rent paid \$1100.00
 - Hearing expenses \$20.00
 - Security deposit applied against monies owed \$825.00.

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*.
9. Also, relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 14: Security Deposit and Section 34: Requirements of notices. Also, relevant and considered in this decision is the following section of the *Residential Tenancies Policy*: Section 12-1: Recovery of costs.

Issue # 1: Rent paid \$1100.00

Landlord's and Tenant's Positions

10. The landlord's representative testified that the tenants messaged him around the 20-August reminding him that they will be vacating the unit at the end of August. The landlord's representative testified that he was unaware that the tenants had any plans to end the tenancy, and he stated that he never received any written notice stating same. The landlord's representative stated that when he told the tenants that they were required to give a 1 month written notice, they responded saying that they spoke to one of the workmen telling him that they will be leaving at the end of August. The tenant's representative did not dispute that the tenants failed to give a written termination notice, however she stated that there wasn't a formal rental agreement in place either and the tenant's believed that they spoke to a representative of the landlord on 1-August when they gave their verbal notice to vacate effective 31-August-2024. The tenant's representative stated that the unit was not suitable due to several issues, and the tenants had no choice but to vacate the unit. The tenant's representative also stated that the tenants remained in the unit until September 3-4 as they did not want to leave until they had their security deposit refunded.

Analysis

11. Section 34 of the *Residential Tenancies Act, 2018*: Requirements for Notices states:

Requirements for Notices

34. A notice under this Act shall

- a. *be in writing in the form prescribed by the Minister;*
- b. *contain the name and address of the recipient;*
- c. *identify the residential premises for which the notice is given; and*
- d. *state the section of the Act under which the notice is given*

12. I accept that there wasn't a written rental agreement in place, and I accept that the tenants verbally gave a termination notice to a staff member of the landlord on 1-August and I also accept that the tenants were unhappy with the condition of the unit. However the *Residential Tenancies Act, 2018* is clear when it comes to the requirements for termination notices. In accordance with Section 34 of the Act as stated above, the notice must be in writing and state the relevant section of the Act.

13. I asked the tenant's representative if the tenants had made a request for repairs to deal with the issues at the unit and she responded that they did not. I find that the tenant's failed to provide a proper termination notice to the landlord and I accept that

the landlord was unable to secure new tenants for the month of September as the tenants did not leave as planned on 31-August. For those reasons, I find that the tenants are responsible for the loss of rental income for the month of September 2024 in the amount of \$1100.00.

Decision

14. The landlord's claim for *rent paid* succeeds in the amount of \$1100.00.

Issue # 2: Hearing expenses \$20.00

15. The landlord paid an application fee of \$20.00 to *Residential Tenancies* and submitted a copy of the receipt to support the claim (LL#1). In accordance with Section 12-1 of the *Residential Tenancies Policy Manual*, 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 landlord's hearing expenses.

Decision

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

Issue # 3: Refund of Security Deposit Security Deposit to be applied against monies owed

Analysis

17. Section 14 of the *Residential Tenancies Act, 2018* deals with security deposits, and the relevant subsections state:

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).
- (12) A landlord who does not make an application in accordance with subsection (11) shall return the security deposit to the tenant.

18. The landlord's claim for losses has been successful as per paragraphs 14 and 16, and as such the security deposit shall be applied against monies owed. Pursuant to the *Residential Tenancies Act, 2018* the landlord must pay interest on a security deposit to a tenant 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 rate for 2024-2025 is 1%.

Decision

19. The tenant's claim for a *refund of security deposit* does not succeed.

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

Summary of Decision

21. The tenant's claim for a refund of security deposit does not succeed.

22. The tenants shall pay the landlord \$290.77 as follows:

Rent paid	\$1100.00
Hearing expenses	20.00
Less security deposit & interest	829.23

Total **\$290.77**



February 11, 2025

Date

Pamela Pennell, Adjudicator
Residential Tenancies Office