

## Residential Tenancies Tribunal

Application 2024-0938-NL

Seren Cahill  
Adjudicator

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### Introduction

1. Hearing was held on 14-November-2024 at 9:16 am.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as the landlords, attended via teleconference.
3. The respondents [REDACTED], [REDACTED], and [REDACTED], also attended via teleconference. The respondents [REDACTED] and [REDACTED] did not attend. The respondents are hereinafter referred to as the tenants.

### Preliminary Matters

4. Two of the tenants were not present or represented at the hearing and I was unable to reach them 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 notice of the 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 they have been properly served. The landlords submitted an affidavit (LL#1) with their application stating that they had served the tenants with notice of the hearing personally on 31-October- 2024 at 5:00 pm. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlords, I proceeded with the hearing in their absence.
5. The other three tenants were present and acknowledged that they had been served notice of the hearing at least ten days beforehand.

### Issues before the Tribunal

6. Should the landlords' claim for unpaid rent succeed?
7. What is the proper disposition of the security deposit?

## 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 (the *Act*).

## Issue 1: Unpaid Rent

### Landlord's Position

9. The landlords claim for \$2000 in unpaid rent. They testified that the monthly rent was originally \$2200/month, but an agreement was struck that the rent would be lowered to \$2000/month if the tenants would limit the heating bill below a certain amount, and they said that the tenants complied with their end of this agreement. They testified that the tenants paid only \$1200.00 for the month of July, \$1800.00 for the month of August, \$1500.00 for the month of September, and \$1500.00 for the month of October.

### Tenants' Position

10. The tenants who attended the hearing did not dispute the landlords' testimony. They explained that the original agreement had been made so that they would each be able to contribute one fifth of the monthly rent. However, two of the tenants (those absent from the hearing) subsequently reneged on the agreement, left the premises, and stopped contributing to the payment of the rent, without first providing a termination notice. They say they have done what they can to meet their obligations but are unable to pay the entire monthly rent by themselves and have, thus far, been unable to find new roommates.

## Analysis

11. It was not disputed that all the tenants rented the property under one agreement. In other words, they agreed to pay the rent jointly, and all of them can be held legally responsible for adhering to this agreement.
12. Based on the testimony before me I accept on a balance of probabilities that the tenants owe the landlords \$2000.00 in unpaid rent for the months of July to October of 2024.
13. The landlords' claim for unpaid rent succeeds in the amount of \$2000.00.

## Security Deposit

14. The landlord has applied to have a portion of the security deposit (\$600.00, representing two fifths of the deposit, equal to the portion contributed by the tenants who have left the premises) applied against the moneys owed. S. 14 of the *Act* defines the law regarding security deposits. S. 14(8) states that the deposit may be used only as provided by in s. 14. S. 14(10) states that where a landlord believes they have a claim for all or part of the security deposit, they may apply to the director under s. 42 to determine the disposition of the security deposit. It does not specify that this must wait until after the tenancy is terminated.

15. As the landlord is owed moneys, they may apply the portion of the security deposit sought against the sum owed.
16. According to s.14(7) of the *Act*, a landlord shall credit interest to the tenant on the full amount or value of the security deposit, at the rate prescribed by the regulations, during the time the security deposit is held by the landlord. The regulations prescribe a 1% simple annual cumulative interest rate for the year of 2024. Calculated to the date of the hearing, the interest to be applied to a security deposit of \$600.00 is \$5.23.
17. The landlords may apply this portion of the security deposit plus interest, valued at \$605.23, against moneys owed. The landlords shall continue to hold the remaining security deposit of \$1200.00+interest in trust for the tenants.

### **Decision**

18. The landlords' claim for unpaid rent succeeds in the amount of \$2000.00.
19. The landlords may apply \$605.23 of the security deposit and interest against the sum owed.
20. The landlords were successful in their claim and are therefore entitled to have their reasonable hearing expenses compensated. In this case, their hearing expenses consisted solely of the \$20.00 application fee.

### **Summary of Decision**

21. The tenants shall pay to the landlord \$1414.77 as follows:

|                            |           |
|----------------------------|-----------|
| Rent.....                  | \$2000.00 |
| Hearing Expenses.....      | \$20.00   |
| Less Security Deposit..... | -\$605.23 |
| Total.....                 | \$1414.77 |

January 7, 2025

Date

  
Seren Cahill  
Residential Tenancies Office