

Residential Tenancies Tribunal

Application 2024-0956-NL

Oksana Tkachuk
Adjudicator

Introduction

1. Hearing was called at 1:47 p.m. on 25-November-2024.
2. The applicant, [REDACTED], hereinafter referred to as "the tenant", attended via teleconference and was represented by [REDACTED] (TT#1).
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as "the landlords", attended via teleconference.

Preliminary Matters

4. The tenant submitted two affidavits with her application stating that she had served the landlords with the notice of hearing via prepaid registered mail tracking numbers [REDACTED] and [REDACTED] on 29-October-2024 (TT#2,3). The landlords confirmed receiving notice of the hearing on that date. In accordance with the *Residential Tenancies Act, 2018* this is good service, and the hearing proceeded.
5. There was fixed term rental agreement which commenced in April-2020 and was converted into month-to-month agreement. Rent was \$650.00 per month, due on the first of each month. The tenant vacated on 17-October-2024. A security deposit of \$325.00 was collected on 3-April-2020 and is in the landlord's possession.

Issues before the Tribunal

6. The tenant is seeking:
 - Refund of rent \$1300.00;
 - Refund of Security deposit \$325.00;
 - Compensation for inconveniences \$1977.00.

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*.

8. Also, relevant and considered in this decision is the following section of the *Residential Tenancies Act, 2018*: Section 14: Security deposit, and following section of the *Residential Tenancies Policy Manual*: Section 12-1: Costs.

Issue #1: Refund of rent \$1300.00.

Tenant's Position:

9. The tenant is seeking \$1300.00 rent refund for September and October, claiming that the landlord violated their rental agreement by locking her out.
10. The tenant's representative stated that on 30-September in the morning, the tenant sent notice of termination to the landlords via email, informing them of her intention to terminate the rental agreement effective 31-October. A copy of this email has been submitted as evidence (TT#4).
11. The tenant's representative stated that following the notice, she attempted to access the rental unit on 30-September around noon to collect her belongings but discovered she was locked out. The tenant contacted the landlord, who arrived. However, a conflict arose between the landlord and the tenant's friends who were assisting her with the move and advocating that it is illegal to lock her out, prompting her to call the RCMP. After that the landlord unlocked the door to the unit; however, did not permit her friends to accompany her into the unit.
12. The tenant's representative further stated that the tenant made four additional attempts to access the unit during October but was unable to enter on any of these occasions as her key no longer worked. The tenant's representative stated that each time tenant tried to enter, she needed to ask the landlords to open the unit for her and it was intimidating that the landlords were present in the unit each time, as they watched her while she attempted to retrieve her belongings, were taking photographs and touching her belongings. The tenant's representative believes the landlord changed the locks, as the tenant had lived in the apartment for four years without any previous issues with the key. The tenant submitted copies of messages to support her claim (TT#5). The tenant claims she paid rent for October on 30-September but was unable to access the unit due to the landlord's actions. The tenant's representative asserts that the tenant being unable to access the unit amounts to an illegal lockout. As a result, the tenant is seeking reimbursement of the rent for both September and October.

Landlord's Position:

13. The landlords dispute the tenant's claim for reimbursement of rent for September and October, arguing that the tenant had access to the unit.
14. The landlord confirmed receiving an email from the tenant on 30-September, in which the tenant provided notice of her intention to terminate the rental agreement effective 31-October. The landlords stated that in the email tenant wanted to use her security deposit as a rent payment and sent only half of rent payment. However, they explained that security deposit cannot be used as a rent payment, and then she transferred remaining rent for the full month of October.
15. The landlord denied the tenant's claim that the locks had been changed, asserting that the locks remained unchanged throughout the period in question.

16. The landlords acknowledged that they did not permit the tenant's friends to enter the unit on 30-September due to a conflict between the landlords and the tenant's friends. They described the friends' behavior as intimidating and expressed concern for potential damages to the property.
17. The landlords also confirmed that they helped tenant to enter the unit and were present during the tenant's subsequent visits to the unit but explained that their presence was necessary to ensure the tenant's friends did not enter the unit, as they feared further incidents or damages caused by these individuals.

Analysis

18. I accept the testimonies provided by both the landlords and the tenant's representative. Based on the tenant's evidence, including her testimony and the texts exchanged between the landlords and tenant, I find the tenant's account to be credible. The tenant has demonstrated that she was unable to access the unit independently after 30-September. As the tenant paid rent for October and provided proper notice of termination in compliance with the terms of the agreement, I accept her claim that she was locked out of the unit.
19. I find that the tenant's inability to access the unit on her own constitutes a violation of the rental agreement. While she remained a tenant, she was entitled to full, independent access to the unit. By restricting her ability to enter the unit without supervision and at her own discretion, the landlords failed to uphold their obligations under the rental agreement. For these reasons, I find that the landlords are responsible for refunding the rent paid by the tenant from 30-September to 31-October, a total of 32 days. The total refund for 32 days amounts to \$681.96. The daily rent rate is calculated as follows:

- *Monthly rent: \$650*
- *Annual rent: \$650 × 12 months = \$7,800*
- *Daily rent: \$7,800 ÷ 366 days = \$21.31*

Decision

20. The tenant's claim for refund of rent succeeds in the amount of \$681.96.

Issue #2: Compensation for inconveniences \$1977.00

21. The tenant is seeking compensation for inconveniences as follows:

#1 Building materials for a shed \$1600.00

Tenant's Position

22. The tenant is seeking a refund of \$1600.00 for building materials for a shed. The tenant's representative testified that the tenant paid \$1600.00 to the landlord for the construction of the shed, which she stated she used, maintained, and decorated. The tenant claimed that the shed was in her possession and not the landlord's. The tenant's representative further stated that the tenant and the landlord agreed that the shed was her property. Based on this understanding, the tenant is seeking reimbursement of the \$1600.00 she paid for the materials.

Landlord's Position

23. The landlords disputed the tenant's claim and denied any obligation to reimburse the \$1,600.00. The landlords further explained that the shed was built by the landlord at the tenant's request and that they verbally agreed the shed belonged to the landlords while the tenant was simply allowed to use it for her needs.
24. The landlord testified that he used his own materials and labor to build the shed, incurring a total cost of approximately \$3000.00. He denied ever asking the tenant to pay for materials and stated that the \$1600.00 was instead a payment for the tenant to use the shed.

#2 Utilities \$229.00 and apartment insurance \$19.00

Tenant's Position

25. The tenant is seeking reimbursement for one month of utility costs, specifically NL Power and Internet charges totaling \$229.00 and apartment insurance totaling \$19.00 for October. The tenant submitted receipts to support her claim (TT#6). The tenant's representative testified that as the tenant was illegally locked out of her unit during October and was unable to access it, the landlords should be responsible for covering these costs.

Landlord's Position

26. The landlords dispute the tenant's claim for reimbursement, asserting that the tenant had already moved out during September. The landlord stated that it was the tenant's responsibility to cancel or transfer these utilities for October, and they should not be held liable for these expenses.

#3 Mileage for wasted moving truck \$84.00

Tenant's Position

27. The tenant is seeking \$84.00 for the mileage of a wasted moving truck. The tenant's representative testified that on 30-September, the tenant arranged for her friends with a truck to help her move belongings out of the unit. The tenant claimed that due to being locked out of the unit illegally and the landlords not allowing her friends to enter, this expense was wasted, resulting in a material loss. The total distance traveled was 120 km and was calculated as the cost at \$0.70 per kilometer, arriving at the amount of \$84.00.

Landlord's Position

28. The landlords disputed responsibility for the \$84.00 mileage claim, arguing that they cannot be held accountable for moving truck expenses. They further stated that 120 km is an excessive distance and is not reasonable.

#4 Dispute application fee \$20.00

Relevant Submission

29. The tenant paid \$20.00 for the application fee and is seeking reimbursement. The tenant submitted a copy of the receipt to support the claim (TT#7).

#5 Accidental overpayment of rent \$25.00

Tenant's Position

30. The tenant is seeking reimbursement of \$25.00, which she stated was an accidental overpayment of rent made on 30-September. She is requesting that the landlords refund this amount.

Landlord's Position

31. The landlord does not dispute the tenant's claim and agrees that there was an accidental overpayment of \$25.00 on 30-September. They have stated that they are willing to reimburse this amount to the tenant.

Analysis

32. The tenant's claim is analyzed as follows:

#1 Building materials for a shed \$1600.00

33. Based on the testimonies of the landlords and the tenant, I find that the \$1600.00 paid by the tenant was rather a payment for the use of the shed. The evidence indicates that the shed was built at the tenant's request, and the \$1600.00 reflects an agreement between the parties for the tenant to use the shed, not to own it. I accept the landlord's testimony that he provided the materials and labor for the construction of the shed, which he valued at approximately \$3,000.00 and the tenant's contribution was a payment for a service provided by the landlord and use of the shed.

34. For these reasons, the tenant's claim for reimbursement of \$1600.00 does not succeed.

#2 Utilities \$229.00 and apartment insurance \$19.00

35. I accept the tenant's testimony that she was unable to access the unit since 30-September due to being locked out, which constitutes a breach of the rental agreement. I find that the landlords shall reimburse the tenant costs for utilities, as they contravened the rental agreement.

36. I accept that the NL Power bills for the period from 10-September to 31-October totaled to \$177.74. This corresponds to a daily rate of approximately \$3.48. For the 32-period in question, the utility cost amounts to \$111.36. Additionally, I find that the landlords are responsible for reimbursing the tenant expenses for the month of October for internet of \$72.00 and insurance costs of \$11.63, based on the checks provided by the tenant.

37. Therefore, I find that the landlords are responsible for reimbursing the tenant for the material losses, totaling \$195.99.

38. The tenant's claim for utilities succeeds in the amount of \$195.99.

#3 Mileage for wasted moving truck \$84.00

39. I asked the tenant whether she had any receipts or proof of payment for the moving truck expense. The tenant explained that the truck belonged to her friends and that she did not provide any receipt or evidence showing that she incurred this cost. As the tenant did not provide sufficient evidence to demonstrate that this material loss was incurred, I find that she has not met the burden of proof for this claim.
40. For this reason, I find that the landlord is not responsible for reimbursing the \$84.00 for mileage expenses.

#4 Dispute application fee \$20.00

41. 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.
42. The tenant's claim for hearing expenses succeeds in the amount of \$20.00

#5 Accidental overpayment of rent \$25.00

43. Since the landlords have agreed to refund overpayment, I find that the tenant is entitled to reimbursement of the \$25.00.
44. The tenant's claim for \$25.00 for the overpayment succeeds.

Decision

45. The tenant's claim for compensation for inconveniences succeeds in the total amount of \$240.99.

Issue # 3: Refund of Security deposit \$325.00

46. 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.

47. In accordance with section 14 of the *Act* as stated above, the landlord did not return the security deposit within the 10-day time frame, the landlord has failed to make application to the Director to retain the security deposit. The tenant was able to show that she paid the security deposit and for those reasons I find that the landlords shall refund the security deposit to the tenant.

48. Pursuant to the *Residential Tenancies Act, 2018* the landlord must pay interest on a security deposit to the tenant for the entire period that the landlord has had the security deposit. The annual interest is 1% for 2024.

Decision

49. The tenant's claim for refund of security deposit plus interest succeeds in the amount of \$327.93.

Summary of Decision

50. The landlords shall pay to the tenant \$1250.88 as follows:

Refund of rent	\$681.96
Compensations for inconveniences.....	\$240.99
Security Deposit plus interest	\$327.93
 Total.....	\$1250.88

03 December, 2024

Date

Oksana Tkachuk, Adjudicator
Residential Tenancies Office