

Residential Tenancies Tribunal

Application 2024-1069-NL
Counter application 2024-1144-NL

Oksana Tkachuk
Adjudicator

Introduction

1. Hearing was called at 9:05 a.m. on 28-January-2025.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord" attended by teleconference.
3. The respondent and counter applicant, [REDACTED], hereinafter referred to as "the tenant" attended by teleconference. [REDACTED] was removed from the application, as she was not a party of the rental agreement.

Preliminary Matters

4. The landlord submitted an affidavit with his application stating that he had served the tenant with the notice of the hearing by text message on 16-January-2025 (LL#1). The tenant acknowledged receiving notice of the hearing on that day. In accordance with the *Residential Tenancies Act, 2018* this is good service.
5. The tenant stated that he had served the landlord with the notice of the hearing by text message on 16-January-2025. The landlord acknowledged receiving notice of the hearing on that day. In accordance with the *Residential Tenancies Act, 2018* this is good service, I proceeded with the hearing.
6. There was a written fixed term rental agreement which commenced on 1-January-2024 for one year. The tenant vacated the unit on 4-January-2025. Rent was \$1625.00 per month due on 1 of each month. A security deposit of \$1218.00 was collected in the beginning of the tenancy and is still in landlord's possession.
7. The landlord amended his application to increase rent amount from \$623.00 as per application to \$1841.00 and to include hearing expenses of \$20.00.
8. The tenant amended his application to include hearing expenses of \$20.00

Issues before the Tribunal

9. The landlord is seeking:

- Rent paid \$1841.00;
- Late fees \$116.00;
- Utilities \$240.00;
- Hearing expenses \$20.00;
- Security Deposit of \$1218.00 to be applied against any monies owed.

10. The tenant is seeking:

- Validity of the termination notice;
- Repairs to be carried out \$812.50;
- Compensation for inconvenience \$6500.00;
- Hearing expenses \$20.00.

Legislation and Policy

11. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.

12. Also, relevant and considered in this decision are the following sections of the *Residential Tenancies Policy*: Section 2-4 Deposits, Payments and Fees, Section 12-1 Recovery of Costs, and following sections the *Residential Tenancies Act, 2018*: Section 10: Statutory conditions, Section 14: Security Deposit, Section 15: Fee for failure to pay rent, Section 18: Notice of termination of rental agreement, Section 19: Notice where failure to pay rent.

Issue # 1: Rent paid \$1841.00 Late fees \$116.00

Landlord's and Tenant's Position

13. The landlord testified that rent is outstanding in the amount of 1841.00 for the month of December and four days of January and stated that he is seeking late fees in the amount of \$116.00.

14. The tenant did not dispute that he did not pay rent in December or January. However, he stated that he withheld rent due to certain inconveniences he experienced during his tenancy.

Analysis

15. Section 15 of the *Residential Tenancies Act, 2018* states:

Fee for failure to pay rent

15. (1) Where a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister.

The minister has prescribed the following:

Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed

(a) \$5.00 for the first day the rent is in arrears, and

(b) \$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00

16. Non-payment of rent is a violation of the rental agreement. Rent is required to be paid under a rental agreement by a tenant during the use or occupancy of a residential premises.

17. I accept the testimony of both parties that the rent was not paid in December and for 4 days of January. Therefore, with regards to the late fees and in accordance with Section 15 of the *Residential Tenancies Act* as stated above, I find that that the late fee of \$75.00 is allowed.

18. To determine the rent owed for the four days of January, the daily rental rate will be calculated as follows:

$$\begin{aligned}\text{Daily rate: } & \$1625.00 \times 12 \text{ mths} = \$19500.00 \\ & \$19500.00 / 366 \text{ days} = \$53.27 \text{ per day}\end{aligned}$$

Decision

19. The landlord's claim for rent and late fees succeeds in the amount of \$1913.08.

Issue # 2: Utilities to be paid \$240.00

Landlord's and Tenant's Position

20. The landlord stated that the tenant did not pay utilities for the past four months of the tenancy. The landlord explained that according to their agreement, the tenant was responsible for 40% of the utility bills, while the other tenants cover 60%. To support this claim, the landlord provided receipts from NL Power for the last four months (LL#2) and stated that he is seeking only \$60.00 per month from the tenant.

21. The tenant acknowledged that he did not pay utilities for past four months and explained that he withheld payments due to poor insulation in the rental unit.

Analysis

22. Based on the testimony, I accept that the tenant did not pay utilities for the last four months of the tenancy. I accept that the tenant was responsible to pay portion of 40% of the utility bill as per the rental agreement. After reviewing the receipts from the NL Power, I find that the landlord's request amount of \$60.00 per month is reasonable. Therefore, I find the landlord's claim for utilities successful. to be paid of \$240.00

Decision

23. The landlord's claim for utilities to be paid succeeds in the amount of \$240.00.

Issue # 3: Validity of the termination notice

Tenant's Position

24. The tenant submitted three copies of termination notices (TT#1) and is seeking a determination on their validity.

Analysis

25. To determine the validity of the termination notice, the two most recent termination notices will be reviewed for the purpose of this decision.

26. The second termination notice was served on 2-September-2024 under the Section 18 of the *Act – Landlord's Standard termination notice*, requiring the tenant to vacate on 31-December-2024. I asked the tenant when he received this termination notice, and he confirmed it was received on 2-September. This termination notice meets the technical requirements of the Act, as it was served more than three months before the end of the fixed-term rental agreement, and therefore appears to be valid.

27. The last termination notice was served on 8-November-2024 under the Section 19 of the *Act – Termination notice where the tenant failure to pay rent*, requiring the tenant to vacate on 20-November-2024. I inquire about when the rent was paid in November, and both parties confirmed that the rental arrears were paid on 19-November. Since the rent was paid before the move-out date stated in the termination notice, this termination notice is not valid.

Decision

28. The termination notice served on 2-September-2024 under the Section 18 of the *Act*, requiring the tenant to move out on 31-December-2024, is a valid termination notice.

Issue # 4: Repairs to be carried out \$812.50; Compensation for inconvenience \$6500.00

Tenant's Position

29. The tenant stated that the rental unit had poor insulation and gaps in the walls, allowing cold air to enter from outside. The tenant testified that he was using the heater, but that did not make any difference. The tenant explained that by the end of August, the temperature inside the unit began to drop significantly, and he submitted a repair request to the landlord at that time (TT#2). As the insulation was not fixed, the tenant is seeking \$6500.00 in compensation for the inconveniences caused by lack of proper insulation, specifically to reduce rent in half to \$812.50.

Landlord's Position

30. The landlord disputed responsibility for the compensation, stating that before purchasing the house, a home inspection was conducted by a professional inspector, which did not reveal any insulation issues. Additionally, the landlord stated that other tenants had ever raised complaints about insulations.

Analysis

31. Section 10 of the Residential Tenancies Act states:

Statutory conditions

Obligation of the Landlord -

(a) *The Landlord shall maintain the residential premises in a good state of repair and fit for habitation during the tenancy and shall comply with a law respecting health, safety or housing.*

(b) *Paragraph (a) applies regardless of whether, when the landlord and tenant entered into the rental agreement, the tenant had knowledge of a state of non-repair, unfitness for habitation or contravention of a law respecting health, safety or housing in the residential premises.*

32. During the hearing I asked the tenant when he first made the landlord aware of the issues with the insulation. The tenant stated that he expressed his concerns since the beginning of the tenancy. The landlord acknowledged that, however he explained that he purchased the house one year ago and that a professional home inspection was conducted before the purchase, which did not reveal any issues with insulation. The landlord also stated that he informed the tenant that he was not planning to make any renovations to the property.
33. The tenant resided in the unit for one year and is now seeking a rent reduction to compensate \$6500.00 for inconveniences due to insulation issues. However, his claim is not supported by sufficient evidence to establish that the insulation was inadequate or that the landlord failed to meet his obligations under the *Residential Tenancies Act*. The tenant made a choice to remain in the unit for a full year despite his concerns, and there is no compelling evidence to justify the amount being claimed. As such, the tenant's claim does not succeed.

Decision

34. The Tenant's claim for compensation for the inconveniences fails.

Issue # 5: Hearing expenses \$20.00

Analysis

35. Section 12-1 of the *Residential Tenancies Policy* states that in general, claimable costs may include the filing fee. The landlord and the tenant paid \$20.00 for the application and are seeking reimbursement (LL#3, TT#3). As the landlord's claim has been successful, the tenant shall pay the hearing expenses.

Decision

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

Issue # 6: Security deposit to be applied against any monies owed \$1218.00

Analysis

37. 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,

- the landlord and tenant may enter into a written agreement on the disposition of the security deposit; or
- 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).

38. The landlord's claim for losses has been successful as per paragraphs 18, 21 and 33 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 in 2024-2025 is 1%.

Decision

39. Security deposit plus interest to be applied against monies owed succeeds.

Summary of Decision

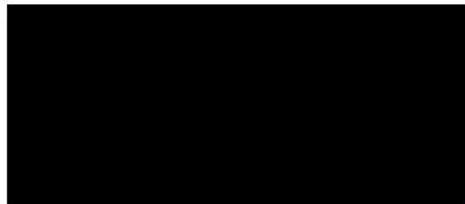
40. The termination notice served on 2-September-2024 under the Section 18 of the Act, requiring the tenant to move out on 31-December-2024, is a valid termination notice.

41. The tenant shall pay the landlord \$941.93 as follows:

Rent and late fees	\$1913.08
Utilities	\$240.00
Hearing expenses	\$20.00
Less Security Deposit & interest ..	\$1231.15
 Total	\$941.93

February 7, 2025

Date



Oksana Tkachuk, Adjudicator
Residential Tenancies Office