

## Residential Tenancies Tribunal

Application 2024-1197-NL

Seren Cahill  
Adjudicator

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### Introduction

1. Hearing was held on 4-February-2025 at 1:45 pm.
2. The applicants, [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED], hereinafter referred to as the tenants, all attended via teleconference.
3. The respondents, [REDACTED], and [REDACTED], hereinafter referred to as the landlords, did not attend.

### Preliminary Matters

4. The landlords were not present or represented at the hearing and I was unable to reach them by telephone at the start of the hearing. I called via the number provided by the landlord to our office but did not hear a dial tone after three attempts. 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 tenants submitted an affidavit (E16) with their application stating that they had served the landlords with notice of the hearing electronically on 6-January-2025 at 4:42 pm. Proof of service was also provided (E13 and E14). The tenants testified that the landlord had provided the email address for the purpose of communicating with the tenants about the tenancy. As the landlords were properly served, and as any further delay in these proceedings would unfairly disadvantage the tenants, I proceeded with the hearing in their absence.

### Issues before the Tribunal

5. Should the tenants' claim for a refund of rent succeed?
6. Should the tenants' claim for compensation for inconvenience 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

9. The tenants claim for a refund of rent in the amount of \$7500.00. The tenants paid rent in the amount of \$2500.00/month from August 2022 to about 30-November-2024.
10. The tenants provided a timeline (E15) which, combined with their sworn testimony, shows ongoing issues with the plumbing in the bathrooms of the rental units. The tenants' claim for a refund of rent is based on their assertion that the landlord's negligence in failing to repair these issues lead to a number of inconveniences, culminating in the landlord shutting off the shower in the main bathroom on 26-October-2024. The only other bathroom with a shower was an ensuite attached to one of the tenants' bedrooms, causing significant inconvenience for all of them. This was only the last and most significant impairment of the tenants' access to the bathroom facilities.
11. I accept the tenant's uncontradicted testimony, which was supported by a significant amount of documentary evidence (generally, E1-E12).
12. I accept that the landlord was negligently failed to uphold his obligation to maintain the premises in a good state of repair and fit for habitation. In addition, by turning off the shower he effectively discontinued a service, privilege, accommodation, or benefit. This constitutes an illegal rent increase under s. 16(5) of the *Act*.
13. I agree with the tenants' submissions on their application's merits, but not the total compensation sought. The tenants seek the full rent for the three months prior to their exit. I do not see sufficient evidence to award the full months' rent for three months. The full months rent should only be awarded where the tenants' ability to use the property is effectively completely defeated. In the present case, while I accept that the tenants' ability to use the property was significantly affected, I do not find that there is sufficient evidence to show that they were effectively completely deprived of the use of the property.
14. I judge the value of the deprivation to be \$750/month for the months of September and October and judge the value of the deprivation during the final month of the tenancy to be \$1000/month, for a total of \$2500.00. This represents 30% of the full rent for the first two months and 40% of the third month.

## Issue 2: Compensation for Inconvenience

15. The tenants claim for \$1500.00 in compensation for inconvenience. The grounds of this consist of the same interferences that underly the claim for a refund of rent. The tenants were already partially successful in that claim. To make another award for compensation based on the same grounds would constitute double recovery and would therefore be an error in law.

### Issue 3: Security Deposit

16. A security deposit is an asset of the tenant(s). According to s. 14(11-13) of the *Act*, where the tenants apply for the return of a security deposit, and the landlord does not file a counterclaim against the deposit within ten days of being served notice of this application, the security deposit must be returned to the tenants. That is the case here.
17. The security deposit here was \$1500.00 paid on or about the beginning of August 2022. According to s. 14(7) of the *Act*, the 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 prescribed an interest rate of 0% for the years 2022 and 2023 and a simple cumulative interest rate of 1% annual for the years 2024 and 2025. Calculated to the date of the hearing, the total interest owed is \$16.48.

### Decision

18. The tenants' claim for a refund of rent succeeds in the amount of \$2500.00.
19. The tenants' claim for compensation for inconvenience fails.
20. The security deposit and interest, valued at \$1516.48, shall be returned to the tenants.

### Summary of Decision

21. The landlord shall pay to the tenants \$4016.48 as follows:

Refund of Rent.....	\$2500.00
Security Deposit.....	\$1516.48
Total.....	\$4016.48

14-April-2025

Date

  
Seren Cahill  
Residential Tenancies Office