

Residential Tenancies Tribunal

Application 2024-1198-NL

Oksana Tkachuk
Adjudicator

Introduction

1. Hearing was called at 9:02 a.m. on 4-February-2025.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant” attended via teleconference.

Preliminary Matters

4. The landlord stated that he had served the tenant with the notice of the hearing by email and messenger on 14-January-2025. The tenant acknowledged receiving the notice of the hearing on that date. In accordance with the *Residential Tenancies Act, 2018* this is good service, I proceeded with the hearing.
5. There was a written fixed term rental agreement which commenced on 25-August-2024 for one year. The tenant vacated the unit on 31-October-2024. Rent was \$720.00 per month due on 1st of each month. A security deposit of \$500.00 was collected on 27-August-2024 and is still in landlord’s possession.
6. The landlord amended his application to increase amount of rent from \$1440.00 as per application to \$2880.00 and to include hearing expenses of \$20.00.

Issues before the Tribunal

7. The landlord is seeking:
 - Rent paid \$2880.00;
 - Hearing expenses \$20.00;
 - Security Deposit of \$500.00 to be applied against any monies owed.

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 Policy*: Section 2-4: Deposits, Payments and Fees, Section 12-1 Recovery of Costs, and following sections the *Residential Tenancies Act, 2018*: Section 14: Security Deposit, and Section 18: Notice of termination of rental agreement.

Issue # 1: Rent paid \$2880.00

Landlord's Position

10. The landlord testified that rent is outstanding in the amount of \$2880.00 for the months of November, December, January and February. The landlord stated that the tenant informed him on 9-October that she is willing to leave the unit by the end of month. According to the landlord the parties had a one-year lease, and he advised the tenant to sublet the rental unit. However, the tenant did not sublet the unit, and since she vacated, the landlord was unable to re-rent it. The landlord further stated that he works in British Columbia, and it was hard to find new tenant even though he started advertising the unit as soon as the tenant notified him of her intention to leave. The landlord stated that the unit remains vacant.

Tenant's Position

11. The tenant stated that while she was interested in renting the unit, she only intended to establish a month-to-month tenancy and never signed a rental agreement.

Analysis

12. Upon review of the evidence, I find that the rental agreement was not signed by both parties. The screenshots of the messages exchanged between the landlord and tenant indicate that the tenant accepted all the terms and conditions outlined in the rental agreement. Additionally, it is evident that the landlord provided a rental agreement specifying that the tenancy was intended as a fixed-term agreement. However, I find that it's the landlord's responsibility to ensure that the tenant signed the agreement before taking possession of the rental unit, as a fixed-term tenancy requires a signed agreement to be valid. Given that the rental agreement was not signed by the tenant, I find that the tenancy operates on a month-to-month basis. Based on the testimonies, I accept that the tenant informed the landlord about terminating the rental agreement on 9-October and vacated the unit on 31-October-2024.

13. The Section 18 of the Act states:

Notice of termination of rental agreement

A tenant shall give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises

....

(b) not less than one month before the end of a rental period where the residential premises is rented from month to month

14. According to the section 18, as stated above, in the month-to-month tenancy, a proper termination notice must comply with the required notice period, which was not met in this case. For this reason, I find that the landlord is entitled for rent of November.

Decision

15. The landlord's claim for rent succeeds in the amount of \$720.00.

Issue # 2: Hearing expenses \$20.00 Analysis

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

Decision

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

Issue # 3: Security deposit to be applied against any monies owed \$500.00 Analysis

18. 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,
 - (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).
19. The landlord's claim for losses has been successful as per paragraphs 15 and 17 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

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

Summary of Decision

21. The tenant shall pay the landlord \$234.78 as follows:

Rent	\$720.00
Hearing expenses	\$20.00
Less Security Deposit & interest	\$505.22
 Total	 \$234.78

February 14, 2025

Date

Oksana Tkachuk, Adjudicator
Residential Tenancies Office