

Residential Tenancies Tribunal

Application 2025-0133-NL & 2025-0209-NL

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:15 a.m. on 9-April-2025.
2. The applicant, [REDACTED] (landlord 1), hereinafter referred to as "the landlord" attended by teleconference. The applicant [REDACTED] (landlord 2), hereinafter referred to as "the landlord" did not attend.
3. The respondent and counter applicant, [REDACTED] (tenant 1), hereinafter referred to as "the tenant" attended by teleconference. The respondent and counter applicant, [REDACTED] (tenant 2), hereinafter referred to as "the tenant" did not attend.
4. [REDACTED] was removed as a respondent to the landlord's application as she is a 15-year-old occupant. [REDACTED] was added to the landlord's application as a respondent as she is the spouse of [REDACTED].
5. [REDACTED] was added to the tenant's application as a respondent as he was a landlord as per the rental agreement (TT#1).

Preliminary Matters

6. The landlords submitted an affidavit with their application stating that they had served tenant 1 with the notice of hearing electronically by email to; [REDACTED] on 2-April-2025 (LL#1). Tenant 1 confirmed that both he and tenant 2 received a copy of the document on that date and waived service, wishing to proceed with the hearing. The tenants submitted an affidavit with their application stating that they had previously served landlord 1 with the notice of hearing electronically by email to; [REDACTED] and by text to: [REDACTED] on 24-March-2025. Landlord 1 confirmed that both she and landlord 2 received a copy of the document on that date and wished to proceed with the hearing. In accordance with the *Residential Tenancies Act. 2018*, this is allowable.
7. There was a written term rental agreement that commenced on 2-August-2024. The tenants vacated the unit on 1-February-2025. Rent was \$2500.00 per month, due on the first day of each month. A security deposit of \$1875.00 was paid on 1-June-2024 and is in the landlord's possession.

Issues before the Tribunal

8. The landlords are seeking:
 - Rent paid \$2500.00
 - Hearing expenses \$20.00
 - Security deposit to be applied towards monies owed \$1875.00.

9. The tenants are seeking:
 - Refund of security deposit \$1875.00.

Legislation and Policy

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

11. Relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 14: Security Deposit and Section 18: Notice of termination of rental agreement. Also, relevant and considered in this decision is the following section of the *Residential Tenancies Policy*: Section 12-1: Recovery of costs.

Issue # 1: Rent paid \$2500.00

Landlord's and Tenant's Positions

12. Landlord 1 testified that the tenants entered into a term agreement in August 2024 for a 12-month period and she stated that they vacated the unit early on 1-February-2025 without proper notice causing them to incur an unexpected financial loss. Tenant 1 did not dispute that they broke the terms of the lease, however he testified that he had to relocate due to work and he stated that he made the landlords aware of the situation in November 2024 via text message and he testified that he made every effort to work with the landlords to find new tenants. Tenant 1 testified that he advertised the unit for rent and had 7 potential tenants interested in the unit and he testified that he forwarded the names of those interested to the landlords for review and he stated that the landlords failed to work with him to seek new tenants. Tenant 1 submitted a copy of text messages showing that he made every effort to assist the landlords in mitigating their losses (TT#3). Tenant 1 stated that they should not be responsible for rent for the month of February given their relocation situation and given that they made every effort to assist the landlords with securing new tenants.

Analysis

13. Section 18 of the *Residential Tenancies Act, 2018*, states:

Notice of termination of rental agreement

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

(c) not less than 2 months before the end of the term where the residential premises is rented for a fixed term.

14. In accordance with Section 18 of the Act as stated above, I find that the tenants did not

provide the landlords with a proper termination notice. I accept that the tenants had to relocate for work and break their lease and I accept that they were very concerned about securing new tenants and I find that they made every effort in advertising the unit for rent and following up with the landlords almost daily to assist them in the process. Based on the thread of text messages entered into evidence, I also accept that the landlords did their due diligence in trying to re-rent the unit for February. I accept the testimony of landlord 1 that they made every effort to re-rent the unit and I do not accept the tenant's testimony that the landlords failed to do enough to find new tenants.

15. I find that this was an unfortunate situation where both parties were working well together so that neither party had to incur any financial loss, but the fact is that the landlords did incur a financial loss, and the role of this tribunal is to determine whether or not the landlords made every effort to mitigate their losses. I asked tenant 1 why he felt that the landlords failed to work with him to secure new tenants and he responded that when he provided the landlords with 7 potential renters that he had found through his advertising efforts, the landlords only asked him for 2 phone numbers. Landlord 1 responded saying that they made every effort to find new tenants as the financial loss would be significant for them, but she had to be very careful and selective as to who she was prepared to rent her property to and she testified that she was advertising on her own. Landlord 1 stated that some of the prospects were not suitable as some were students looking for a property for the upcoming September school year and some were young adolescents which she was unwilling to rent to. Landlord 1 testified that they made every effort to mitigate their losses, and she stated that she had a suitable candidate selected, which unfortunately fell through.
16. I find that the landlords made every effort to mitigate their loss of rental income and as they were unsuccessful in doing so, I find that the tenants are responsible for rent for the month of February.

Decision

17. The landlord's claim for *rent paid* succeeds in the amount of \$2500.00.

Issue # 2: Hearing expenses \$20.00

18. The landlords paid an application fee of \$20.00 to *Residential Tenancies* and submitted a copy of the receipt to support the claim (LL#2). In accordance with Section 12-1 of the *Residential Tenancies Policy Manual*, filing fees can be claimable costs. As the landlord's claim for losses has been successful, I find that the tenants are responsible for the landlord's hearing expenses.

Decision

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

Issue # 3: Refund of Security Deposit Security Deposit to be applied against monies owed

Analysis

20. 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).*

21. The landlord's claim for losses has been successful as per paragraphs 17 and 19, 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 rate for 2024-2025 is 1%.

Decision

22. The tenant's claim for a *refund of security deposit* does not succeed.

23. The landlord's claim to have the *security deposit applied against monies owed* succeeds.

Summary of Decision

24. The tenant's claim for a refund of security deposit does not succeed.

25. The tenants shall pay the landlords \$632.07 as follows:

Rent paid	\$2500.00
Hearing expenses	20.00
Less security deposit & interest	1887.93

Total **\$632.07**



April 15, 2025

Date

Pamela Pennell, Adjudicator
Residential Tenancies Office