

Residential Tenancies Tribunal

Application 2025-0446-NL
Counter application 2025-0563-NL

Oksana Tkachuk
Adjudicator

Introduction

1. Hearing was called at 9:19 a.m. on 24July-2025.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant”, was represented by [REDACTED] (TT#1), who attended via teleconference.
3. The respondent and a counter applicant, [REDACTED], hereinafter referred to as “the landlord”, was represented by [REDACTED] and [REDACTED], who attended via teleconference.

Preliminary Matters

4. The tenant submitted an affidavit with their application stating that they had served the landlord with the notice of hearing electronically on 25-June-2025 (TT#2). The landlord’s representatives confirmed receiving the notice of the hearing on that date. In accordance with the *Residential Tenancies Act, 2018* this is good service.
5. The landlord submitted an affidavit with their application stating that they had served the tenant with the notice of hearing electronically on 2-July-2025 (LL#1). The tenant’s representative confirmed that they were properly informed about the hearing 2-July. 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-September-2021 for one year and transitioned into a month-to-month relationship, however the tenant resided in the unit since 9-August-2021. The tenant has not resided in the unit since the end of October and removed their remaining possessions from the unit on 4-April-2025. Rent was \$775.00 per month, due on the first of each month. A security deposit of \$337.50 was collected on 27-July-2021 and is still in the landlord’s possession.
7. The tenant’s and the landlord’s representatives amended their applications regarding Security Deposit and agreed upon the amount of \$337.50.

Issues before the Tribunal

8. The tenant is seeking:
 - Rent refunded \$4650.00;
 - Utilities paid \$1428.02;
 - Compensation paid for the inconvenience;
 - Rent reduced \$1550.00;
 - Other expenses \$2400.00;
 - Refund of the Security Deposit \$337.50.

9. The landlord is seeking:
 - Rent paid \$1275.00;
 - Compensation paid for damages \$130.00;
 - Other expenses \$126.00;
 - Security deposit to be applied against any monies owed \$337.50.

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. Also, relevant and considered in this decision are the following sections of the *Residential Tenancies Policy*, Section 9-3: Compensations for Damages to Rental Premises, and the following section of the *Residential Tenancies Act, 2018*, Section 14: Security Deposit.

Issue #1: Rent reduced \$1550.00;

Tenant's Position:

12. The tenant is seeking a rent reduction in the amount of \$1550.00, representing the full rent for April and May, which was not paid due to the tenant being unable to access the rental unit. The tenant's representative explained that in mid-October, the tenant fell twice inside the unit, resulting in a broken rib and a broken hip. Following these injuries, the tenant began using a walker for mobility and was no longer physically able to use the stairs required to access or leave the apartment.

13. By the end of October, the tenant contacted the landlord to explain her situation and requested a relocation to an accessible unit. According to the tenant's representative, the landlord's representatives repeatedly stated that they were looking for another unit and instructed the tenant to call back each month for updates. In good faith, the tenant continued to pay rent from October through March, honoring her lease while waiting for a suitable, accessible unit to become available. The tenant submitted proof of communications with the landlord to support their claim (TT#3). However, during this entire period, the tenant did not reside in the apartment due to her inability to safely enter or exit it.

14. On 4-April, the landlord informed the tenant that no accessible unit would be provided. As a result, the tenant was forced to permanently vacate and remove her remaining belongings from the rental unit. The tenant's representative maintains that since the tenant could not use the unit from mid-October, and since her larger furniture and belongings remained in the unit until 4-April, she should not be held responsible for the rent in April and May and is entitled to the requested rent reduction.

15. The tenant's representative further stated that on 31-March, they submitted a formal request for repairs to improve access to the rental unit (TT#4). This request was made following advice received from an officer with the Residential Tenancies Tribunal, who informed them that submitting a formal repair request would be necessary if they were seeking a rent reduction. The tenant's representative emphasized that the tenant was requesting reasonable accommodations that would have allowed her to access the premises safely. The request was submitted in good faith, in accordance with the process advised by the Tribunal.

Landlord's Position:

16. The landlord's representative disputed the tenant's claim for a rent reduction. They acknowledged the tenant's request for relocation and stated that efforts were made to find an accessible unit within their buildings. However, due to high demand and limited availability, they were unable to locate a suitable alternative unit for the tenant.
17. The landlord's representative further stated that the tenant was advised on multiple occasions that she had the option to terminate her lease at any time if she found a more suitable and accessible unit elsewhere. The landlord asserts that the tenant did not communicate any intent to vacate the unit. While the landlord agrees that rent was not paid for April and May, they do not accept responsibility for the requested rent reduction, as they believe they acted reasonably and kept the tenant informed of her options throughout.
18. The landlord's representative confirmed that they received the tenant's request for repairs on 31-March. However, they stated that the request did not concern any actual damage to the unit that would typically fall under the definition of "repairs." Instead, they explained that the tenant was essentially asking for structural modifications to the building to make it accessible, which the landlord does not consider to be within their obligations.
19. The landlord's representative further stated that there is nothing in the Residential Tenancies Act that imposes an obligation on the landlord to relocate a tenant or modify the property in order to accommodate a transfer to a different unit based on accessibility needs. They reiterated that the tenant was advised that she could terminate the lease if the current unit no longer met her needs.

Analysis

20. I accept the testimony of both the tenant's representative and the landlord's representative that by the end of October the tenant requested a relocation from her rental unit to another unit due to mobility issues, as the tenant was using a walker and was no longer able to safely use the stairs to enter or exit the unit.
21. I also accept the landlord's testimony that efforts were made to locate a more suitable rental unit for the tenant. However, due to the high demand for housing within the landlord's properties, they were unable to secure an alternative unit with safe access for the tenant. I also acknowledge that the landlord offered the tenant the option to terminate the rental agreement if she was able to find another unit that met her accessibility needs.
22. According to the Section 4-2 of the Policy, *before submitting an application for Dispute Resolution seeking an order for the landlord to make repairs, the tenant must serve a*

request to make repairs on the landlord and allow a reasonable time for the landlord to undertake the repairs; and ensure rent is not in arrears. I further accept that the tenant submitted a formal request for repairs seeking safe access to the unit. However, I find that the landlord is not obligated to undertake structural modifications to the building for the purpose of making it accessible. The tenant's request, which seeks modifications that would amount to structural changes for accessibility purposes, does not fall within the scope of a standard request for repairs as contemplated under the *Residential Tenancies Act*.

23. Furthermore, I find that the tenant failed to comply with section 4-2 of the *Policy*, which clearly states that a tenant must not be in arrears when making a request for repairs; as the rent for April was unpaid, the tenant's request for repairs is therefore not valid. Therefore, the tenant's claim for a rent reduction for the months of April and May does not succeed.

Decision

24. The tenant's claim for rent reduction does not succeed.

Issue #2: Rent refunded \$4650.00;

Tenant's Position:

25. The tenant is seeking a rent refund in the amount of \$4650.00, representing rent paid from 1-November to 31-March. The tenant's representative stated that the tenant did not occupy or use the rental unit during this time due to developed health conditions and the need for a walker, which made the unit inaccessible due to stairs at both entrances.

26. The tenant's representative argued that the landlord failed to provide alternate accommodation or offer a reasonable solution that would accommodate the tenant's mobility needs. As a result, the tenant paid rent for five months for a unit she could not safely access or reside in. The representative emphasized that the tenant continued to pay rent during this period out of good faith, while waiting for the landlord to find a more suitable, accessible unit.

Landlord's Position:

27. The landlord's representative disputed the tenant's claim for a rent refund. They stated that the tenant signed a rental agreement which remained in effect during the period in question, and that the tenant retained legal access to the rental unit throughout. The landlord's position is that rent was collected in accordance with the terms of the lease, and the tenant was therefore obligated to continue paying rent unless and until the agreement was formally terminated. The landlord's representative acknowledged that they were aware of the tenant's concerns and health-related challenges and advised the tenant that termination of the rental agreement could be considered as an option.

28. The landlord's representative believes that the landlord fulfilled their obligations under the rental agreement and that the tenant's personal decision not to vacate but also not to occupy the unit does not release her from the duty to pay rent.

Analysis

29. I accept the testimony of the tenant's representative that the tenant continued to pay rent while awaiting the landlord's efforts to locate a more suitable unit; however, I also find that

it was the tenant's decision not to terminate the rental agreement during this period. The landlord acted within their rights in collecting rent and attempting to find alternative accommodations, and in the absence of a termination notice or formal communication that the unit had been vacated, I do not find the landlord responsible for refunding rent for the months in question.

Decision

30. The tenant's claim for refund of rent does not succeed.

Issue #3: Utilities paid \$1428.02;

Tenant's Position:

31. The tenant is seeking reimbursement for utility expenses in the amount of \$1428.02, which were incurred between mid-October and June—a period during which the tenant states she was not residing in the rental unit. According to the tenant's representative, the tenant did not disconnect the utility services and kept up with payments as a good-faith effort while waiting for the landlord to offer a suitable, accessible unit. The tenant's representative argues that the tenant should not be responsible for these utility costs during a time when the unit was not in use and was effectively inaccessible to her.

Landlord's Position:

32. The landlord's representative disputed the tenant's claim for reimbursement of utility expenses. They stated that the tenant was responsible for paying rent and utilities under the rental agreement. Given this, the landlord asserts that the tenant remains responsible for associated costs, for the time period in question.

Analysis

33. I accept the testimony of the tenant's representative that the tenant continued to pay for utilities, despite not residing in the unit. When asked about the date of vacating the premises, the landlord's representative confirmed that the tenant had not been residing in the unit since the end of October and had removed her personal belongings at that time, with the exception of larger furniture items, which remained in the unit until 4-April. After that date, no items belonging to the tenant remained in the unit.

34. When asked whether the rental agreement had been terminated, the tenant's representative confirmed that the tenant never informed the landlord of her intention to vacate. Therefore, I find that the tenant remained responsible for utility payments under the terms of the rental agreement, regardless of her decision not to reside there. I also find that it was the tenant's responsibility to arrange for the disconnection of the electricity account with Newfoundland Power. As such, the tenant's claim for reimbursement of utility costs does not succeed.

Decision

35. The tenant's claim for reimbursement of the utilities does not succeed.

Issue #4:Other expenses \$2400.00;

Tenant's Position:

36. The tenant is also seeking reimbursement of \$2400.00 for additional accommodation expenses incurred due to her inability to safely access the rental unit. The tenant's

representative explained that the tenant had no choice but to relocate and rent a room elsewhere.

37. According to the tenant's representative, from November to April, the tenant rented a room from the landlord of her daughter's residence. The landlord of that property agreed to rent one room to the tenant for \$400.00 per month, including utilities, as an act of goodwill. The tenant's representative emphasized that this arrangement was necessary because the tenant could not use her original rental unit but was still waiting for the landlord to provide an accessible alternative, which never happened.

Tenant's Position:

38. The landlord's representative disputed the tenant's claim for reimbursement of \$2400.00 in alternative accommodation costs. They stated that the tenant continued to hold a rental agreement during the entire period in question and never formally terminated her tenancy.

39. The landlord's representative argued that they are not responsible for any rent the tenant chose to pay elsewhere, as the original rental unit remained available to her under the terms of the lease. Therefore, they believe the tenant's decision to rent another room was personal and unrelated to any legal obligation on the part of the landlord.

Analysis

40. I accept the testimony of the tenant's representative that the tenant secured an additional rental unit due to her health condition. I also accept that the tenant paid rent for the new accommodation.

41. While I acknowledge the tenant's need for a more suitable and accessible rental unit due to her health condition, I find that the responsibility to secure accommodation that meets their personal needs rests with the tenant. Therefore, I find that the cost associated with the alternative accommodation is the tenant's responsibility.

Decision

42. The tenant's claim for other expenses does not succeed.

Issue #5: Compensation paid for the inconvenience;

Tenant's Position:

43. The tenant is also seeking compensation for the inconvenience and emotional distress caused by the lack of access to her rental unit. The tenant's representative stated that the tenant experienced significant disruption to her quality of life after being unable to safely enter or reside in her apartment due to a mobility issue.

44. According to the tenant's representative, to remain safe, the tenant was forced to relocate to a small single room, which lacked the comfort and independence of her own home. During this period, the tenant experienced physical exhaustion and emotional stress while waiting for the landlord to locate an accessible unit. Despite repeated follow-ups, the landlord failed to provide an alternative and ultimately informed the tenant in April that no accessible unit would be made available. The tenant's representative described the impact of this decision as distressing and upsetting.

45. The tenant's representative further emphasized that the tenant had been a resident with the landlords for over 20 years and felt deeply disappointed and disrespected by how she was treated once her health condition changed. She believed the landlord showed preference to new applicants from the street over long-term tenants with accessibility needs and referred to this treatment as discriminatory.

46. The tenant's representative stated that they leave the amount of compensation for inconvenience and emotional harm to the discretion of the Tribunal, based on the stress and emotional toll experienced by the tenant throughout the process.

Landlord's Position:

47. The landlord's representative disputed the tenant's account of inconvenience and denied any discriminatory conduct. They maintained that while efforts were made to locate an accessible unit, the landlord was under no legal obligation to transfer the tenant to another unit based on her medical or accessibility needs.

48. The landlord's representative further stated that they did not prioritize others over the tenant based on discriminatory grounds, and that accessible unit availability and high demand were the primary reasons for not securing a transfer. Therefore, the landlord does not accept responsibility for the tenant's emotional distress and does not agree that any compensation is owed in this regard.

Analysis

49. I accept that the tenant experienced significant challenges while awaiting an accessible rental unit, and I acknowledge the inconvenience and stress this situation may have caused. However, this Tribunal does not have jurisdiction to award compensation for pain, suffering, or emotional distress. As such, while the tenant's circumstances are understood and appreciated, the claim for compensation related to inconvenience does not succeed.

Decision

50. The tenant's claim for inconvenience does not succeed.

Issue #6: Rent paid \$1275.00.

Landlord's Position:

51. The landlord is seeking rent payment for the months of April and May, totaling \$1515.00. However, they adjusted the May rent following the issuance of a termination notice under the section 19 of the Act, on 13-May, with a vacate date of 26-May. On 20-May, the landlord discovered that the unit was already vacant. As a result, the landlord is seeking rent for the full month of April and for 20 days in May.

Tenant's Position:

52. The tenant's representative disputed the landlord's claim, stating that the tenant was unable to reside in the unit due to health-related accessibility issues and had already paid rent for months during which she was not living in the unit. The tenant's representative explained that the tenant was financially strained and therefore stopped paying rent in April. Additionally, the representative asserted that the tenant never received a termination notice from the landlord.

Analysis

53. I accept the testimony of both the landlord's and the tenant's representative that rent was not paid for the months of April and May. During the hearing, I asked the tenant's representative whether the landlord had been informed that the tenant is terminating the rental agreement. The tenant's representative confirmed that no such notice was given. Based on this evidence, I find that the tenant did not terminate the rental agreement in accordance with the *Residential Tenancies Act*. As the tenancy remained active and rent was unpaid for the months of April and May, I find that the tenant is responsible for the rent owing for those months. I find that the landlord's claim for April rent and 20 days of May is reasonable. The rent for the month of May will be calculated on prorated basis as follows:

$$\begin{aligned} \$775 \times 12 \text{ months} &= \$9300 \text{ annual rent} \\ \$9300 \div 365 \text{ days} &= \$25.47 \text{ per day} \\ \$25.47 \times 20 \text{ days} &= \$509.40 \end{aligned}$$

54. While I find that the tenant is responsible for rent for the months of April of \$775.00 and May of \$509.40, the total amount owing of \$1284.40 exceeds the amount claimed by the landlord. As the Tribunal cannot award more than what has been claimed, the landlord will be awarded the amount of \$1275.00.

Decision

55. The landlord's claim for rent succeeds in the amount of \$1275.00.

Issue #7: Compensation paid for damages \$130.00.

Landlord's Position:

56. The landlord is seeking compensation in the amount of \$130.00 for cleaning the rental unit after discovering it vacant. Although they submitted a receipt (LL#2) showing a total cleaning cost of \$240.00, they clarified that they are only claiming a portion of that amount. The landlord stated that cleaning was required for the cupboards, toilet, sink, vanity, fridge, stove, and nicotine residue on the walls. They also noted that the building is designated as non-smoking. The landlord stated that they submitted photographic evidence to support their claim.

Tenant's Position:

57. The tenant's representative disputed the landlord's claim, stating that the unit was cleaned on 5-April. She asserted that the yellowing on the ceilings was likely due to normal wear and tear, and that the tenant did not smoke in the unit. She explained that the tenant cooked in the kitchen, however had not used the kitchen from October to April. The tenant's representative also stated that they did not receive any evidence from the landlord, including the move-out inspection or supporting documentation.

Analysis

58. In accordance with *Residential Tenancies Policy 9-3*, the applicants are required to show:

- *That the damage exists;*
- *That the respondent is responsible for the damage, through a willful or negligent act; and*

➤ *The value to repair or replace the damaged item(s).*

59. I accept the landlord's testimony that they incurred financial expenses for cleaning the unit after discovering it vacant. However, the tenant's representative disputed the claim and stated that the unit, including the items in question, was cleaned prior to vacating. The burden of proof rests with the landlord to demonstrate that the unit required cleaning.
60. According to the *Residential Tenancies Act*, any evidence intended to be relied upon at a hearing must be received by the Residential Tenancies Office and provided to the other party at least three days prior to the hearing. When asked whether the supporting evidence regarding cleaning was provided to the tenant, the landlord stated that they likely forgot to do so. As a result, the supporting documentation was not properly submitted in accordance with the *Act*. Therefore, this evidence cannot be considered for the purpose of this claim. I find that the landlord has failed to support their claim with sufficient evidence, and in light of the tenant's dispute of the claim, the landlord's claim for cleaning costs does not succeed.

Decision

61. The landlord's claim for compensations paid for damages does not succeed.

Issue #8: Other expenses \$126.00.

Landlord's Position:

62. The landlord is seeking compensation for additional expenses, including \$100.00 in returned cheque fees due to insufficient funds, calculated at \$50.00 per each asset and tax from \$130.00 in cleaning charges.

Tenant's Position:

63. The tenant's representative disputed the landlord's claim, stating that the tenant should not be held responsible for the returned cheque fees, as the financial hardship was caused by the landlord's management.

Analysis

64. According to paragraph 4 of the rental agreement (LL#3), the tenant agreed to pay a service charge of \$25.00 for each cheque returned due to non-sufficient funds. While the tenant's representative disputed responsibility for the non-sufficient fund's charges, they did not dispute that two NSF incidents occurred. In light of this, and pursuant to paragraph 4 of the rental agreement, I find that the landlord is entitled to \$50.00 for the two NSF charges.
65. As for the landlord's claim for taxes on the cleaning costs, since the landlord's claim for damages was not successful as per paragraph 61 of this decision, the landlord will not be awarded for cleaning-related expenses.

Decision

66. The landlord's claim for other expenses succeeds in the amount of \$50.00.

Issue #6: Refund of the Security Deposit \$337.50;

Security deposit to be applied against any monies owed \$337.50.

Analysis

67. 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).

68. The landlord's claim for losses has been successful as per paragraphs 55 and 61 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 interest in 2021-2023 was 0%, the annual interest in 2024-2025 is 1%.

Decision

69. Security deposit plus interest of \$342.78 shall be applied against monies owed.

Summary of Decision

70. The tenant shall pay the landlord \$982.22 as follows:

Rent paid \$1275.00

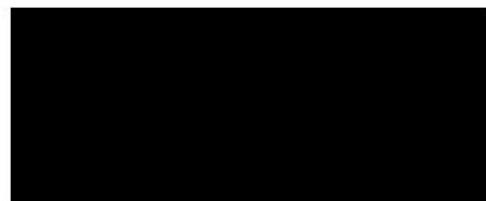
Other expenses \$50.00

Less Security Deposit & interest \$342.78

Total \$982.22

July 30, 2025

Date



Oksana Tkachuk, Adjudicator
Residential Tenancies Office