

Residential Tenancies Tribunal

Application 2022-0805-NL

Decision 22-0805-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:06 a.m. on 25-October-2022.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.
4. The tenant called a witness, [REDACTED], hereinafter referred to as “the witness.”

Preliminary Matters

5. The tenant provided an affidavit (TT#01) stating that he had served the landlord with notice of today’s hearing by prepaid registered mail ([REDACTED]) the package was returned to sender. The tenant also stated that he served the landlord with notice by email on 16-September-2022. The landlord confirms receiving the email with notification.

Issues before the Tribunal

6. The tenant is seeking
 - Refund of security deposit \$750.00
 - Electric bill refund \$112.86
 - Rent refund \$475.00
 - Compensation for inconvenience/travel \$17.43
 - Hearing expenses \$34.88

Legislation and Policy

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

8. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 7: Provision of rental agreement and information, Section 10: Statutory conditions, and Section 14: Security deposit, as well as Residential Tenancies Policy 3-002 Notice to enter.

Issue 1: Refund of security deposit \$750.00

Tenant's Position

9. The tenant provided the rental agreement he held with the previous landlord. (TT#02). They had a term agreement from 01-July-2020 until 30-June-2021 and then became a monthly agreement. Their agreement is for \$1,000 rent paid on the first day of each month. He paid a security deposit of \$750.00 on 26-May-2020. He said that the new landlord purchased the house in August 2022.
10. The tenant provided a termination notice to the initial landlord and gave back possession of the apartment to the current landlord on 31-August-2022.
11. The tenant agrees that he had the power bill taken out of his name as of 25-August-2022. The tenant did not agree to the landlord retaining a portion of his security deposit for the cost of electricity after 25-August-2022.

Landlord's Position

12. The landlord confirms the details of the rental agreement as stated by the tenant. He said he took possession of the house on 23-August-2022.
13. The current landlord stated that the agreement held with the other landlord was passed on to him when the purchase of the house went through. He said that the tenant's payment of a security deposit was placed in his possession at that time. He accepts the termination notice given by the tenant.
14. The landlord agrees that the tenant provided the keys and returned the apartment on 31-August-2022.
15. The landlord provided into evidence (LL#01) a notification from NF Power Customer Relations informing him that the tenant had closed his electricity account and that effective 25-August-2022 the billing was in the landlord's name. The landlord contacted NF Power and they said that the unit uses on average 6.07 a day, he told the tenant that he would be holding \$42.63 from the security deposit for this expense, because the power bill should have remained in the tenant's name until the 31-August-2022. The landlord provided the text conversations (LL#01) with the tenant. The tenant disputes the calculation of an average rate over a year in the text messages (LL#01) and said that a more accurate representation is the average used in August. The landlord accepted the tenant's argument that the remainder of August was at a rate of 14 kilowatt hours per day at 12.345 per kilowatt hour. The landlord calculated this over a period of 6 days and determined a bill of \$18.11.

16. The landlord said that he returned the security deposit less the billing for \$18.11 for the power bill. He refunded the tenant \$732.89 of the security deposit on 10-September-2022.
17. The landlord didn't file a counter-suit to the tenant's claim for his security deposit.

Analysis

18. As per Section 14 of the *Residential Tenancies Act, 2018*:

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).*

(12) *A landlord who **does not make an application** in accordance with subsection (11) **shall return the security deposit to the tenant.***

(13) *Where a landlord does not make an application under paragraph (10)(b) or return the security deposit in accordance with subsection (12), the director may, without conducting a hearing, make an order requiring the landlord to return the security deposit to the tenant.*

(14) *Where a landlord **does not make an application** under subsection (11), he or she is **not prohibited from making an application** under section 42 other than an application with respect to a claim against the security deposit.*

(15) *For the purpose of subsections (8) to (14), "security deposit" includes the interest credited under subsection (7).*

19. Section 14 states that once a tenant makes an application for the return of the security deposit, the landlord has 10 days to file a claim, from the date they are notified of the application. If they don't file the claim in the 10 days, then the security deposit is to be returned to the tenant. The landlord may still file a claim for loss under Section 42.
20. The landlord shall return the remainder of the security deposit, totaling \$18.11, to the tenant.

Decision

21. The tenant's claim for security deposit returned succeeds in the amount of \$18.11.

Issue 2: Electric bill refund \$112.86

Tenant's Position

22. The tenant provided a ledger for the NF Power Bill (TT#05) for \$112.86 for the period of 01-25 August. He said that the landlord was continually accessing the property without his permission beginning 15-August-2022. He said that when the landlord was in the apartment he was leaving the lights on and running a dehumidifier.
23. The tenant is seeking reimbursement from 15-29 August. He calculated the rate as \$256.51 divided by the 25 days in the month that the tenant was billed and then multiplied by the 11 days from 15-31 August for a total of \$112.86.
24. The tenant is seeking reimbursement for this expense.

Landlord's Position

25. The landlord stated that he didn't gain possession of the property until 23-August-2022. The landlord points out that any visits to the apartment before that day were for final inspection in relation to the purchase of the house. Prior to 23-August-2022 he is not the landlord and is a purchaser doing an inspection.
26. After the landlord purchases the house, he contacts the tenant with his contact information. Due to the tenant having his belongings moved the landlord offers to meet with the tenant to have the keys turned in and the final inspection completed. The tenant informs him that he is renting the apartment until 31-August-2022 and the keys will be returned at that time, unless the landlord would like to reimburse him for the rent for the remaining days.
27. The landlord said that he did contact the tenant (LL#01) with 24 hours' notice and inquired about entering the apartment on 24-August-2022 to do some repairs. He also told him he had viewings scheduled for the apartment on that day. The tenant gave permission (LL#01) for the entry for the viewings, but nothing else.
28. On the 27^h the tenant contacted the landlord about a leak (LL#01) and gave him permission to enter to carry out repairs. The landlord told him, at that time, that a dehumidifier was plugged in and that he would need to enter the apartment daily to check on the leak and dispose of the water. The tenant agreed (LL#01).
29. The landlord doesn't agree that he owes the tenant \$112.86 for electricity.

Analysis

30. The tenant is claiming electricity for the period of the 15-August until the 31-August. From the 15-August until the 23-August, the landlord was not the owner of the property and the tenant made it clear that the apartment was his possession until the end of the month.
31. The landlord did take possession of the property on the 23-August. On the 25-August the tenant had removed his name from the power bill and the billing then went to the

landlord. The landlord has the right to access the apartment for scheduled viewings and to complete repairs. The tenant gave permission for this entry.

32. The compensation requested by the tenant is without merit. He is claiming for a week when the landlord was in the process of purchasing the property and the following week when the tenant had already removed his own name from the billing and at that time, the landlord was directly billed from NF Power. His request for \$112.86 compensation for the electric bill fails.

Decision

33. The tenant's claim fails.

Issue 3: Rent refunded \$475.00

Tenant's Position

34. The tenant has stated that the landlord was in the apartment on the 15, 18, 22, 24 and 29 of August. He said that the landlord entered the property multiple times. He said these entries are without his permission and that the landlord left a dehumidifier running and the lights on.

35. The tenant called a witness; she also said that the landlord left the lights on in the apartment.

36. The tenant is seeking ½ the rent for August from the 15-31st, totaling \$475.00.

Landlord's Position

37. The landlord stated that he didn't receive the keys until 31-August-2022. He believes that the compliant by the tenant is frivolous.

Analysis

38. As per Section 10 of the *Residential Tenancies Act, 2018*, it is the responsibility of the landlord to maintain the property in a good state of repair, the landlord gave 24 hours' notice and received permission from the tenant to enter the apartment for the purpose of the repairs.

Statutory conditions

10. (1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:

1. 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.

39. Further to this Section 10 also states that a landlord may, with 4 hours' notice show the apartment to potential tenants, as follows:

Statutory conditions

10. 5. Entry of Residential Premises - Except in the case of an emergency, the landlord shall not enter the residential premises without the consent of the tenant unless

(a) **notice of termination** of the rental agreement has been given and **the entry is at a reasonable time** for the purpose of **showing the residential premises to a prospective tenant** or purchaser and a reasonable effort has been made to give the tenant at least 4 hours' notice;

(b) the entry is made at a reasonable time and written notice of the time of the entry has been given to the tenant at least 24 hours in advance of the entry; or

(c) the tenant has abandoned the residential premises under section 31.

40. By virtue of paying rent the tenant is entitled to the use and enjoyment of the property, however, the landlord also has rights and responsibilities towards the property. This landlord took possession on 23-August and only entered the apartment with permission of the tenant for the purpose of showing or repairing the apartment. The landlord acknowledges that he did turn on the lights and the dehumidifier, however, it has also been established that he paid for the electricity during that time period.

41. The tenant's claim for rent refunded is without merit and fails.

Decision

42. The tenant's claim for rent fails.

Issue 4: Compensation for inconvenience/travel \$17.43

Tenant's Position

43. The tenant said that he had moved into another apartment approximately 3-4 kilometers away. He said he made numerous trips to the apartment during the last week of his tenancy to check on the apartment after the landlord had attended for repairs or for viewings with potential new renters.

44. The tenant said he travelled to the apartment on the 23, 24, 27, 29 and 31. He said on the 31st he put the garbage bins out that were full of gyproc from the repairs.

45. The tenant is seeking mileage for his travel totaling \$17.43.

Landlord's Position

46. The landlord doesn't agree that he owes this expense.

Analysis

47. As the tenant is the renter during the last week of August, he bears the rights and responsibilities of ownership. The tenant attended the apartment to ensure the safe keeping of his rental property. The landlord did not request that the tenant attend the apartment and is not responsible for the tenant's travel.

Decision

48. The tenant's claim for mileage fails.

Issue 5: Hearing expenses reimbursed \$34.88

49. The tenant submitted the receipts for \$34.88 for the cost of the \$20.00 application fee (LL#08) and \$14.88 for the cost of the registered mail (LL#09) and pursuant to policy 12.01, as the award does not exceed the amount of the security deposit, hearing expenses related to the filing fee will not be awarded.

Summary of Decision

50. The landlord shall reimburse the tenant the remaining \$18.11 of the security deposit.

October 31, 2022

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office