

## **Residential Tenancies Tribunal**

Application 2023-0123-NL

Decision 23-0123-00

Jacqueline Williams  
Adjudicator

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### **Introduction**

1. Hearing was called at 11:09 a.m. on 29-March-2023.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord" attended by teleconference.
3. Respondent, [REDACTED], hereinafter referred to as "the tenant" did not attend.
4. Respondent [REDACTED], hereinafter referred to as "the authorized representative," attended by teleconference.

### **Preliminary Matters**

5. The landlord submitted an affidavit (LL#01) stating he served both tenants by giving the notice to the authorized representative personally on 22-February-2023. The authorized representative disputes that the landlord gave her two copies of the notice; however, she waives proper notification and stated she would prefer to proceed with the hearing today.
6. The authorized representative submitted an authorized representative form (TT#01) stating that she could represent the tenant; who is her daughter.
7. The authorized representative states she is not a tenant of the landlord and has never lived at the premises. She said that the tenant is her daughter and she has a disability; she assists her. She provided a copy of the rental agreement (TT#02) showing only the tenant is named on the agreement, as well as, a copy of her personal NL power bill (TT#03) which is for a different address. The landlord disputes that the authorized representative is not a tenant, however did not provide any evidence that she is his tenant. I therefore accept the authorized representative's proof that she is not a tenant of the landlord and I determine that she is removed from the application. She will act as the authorized representative of the tenant only.

### **Issues before the Tribunal**

8. The landlord is seeking:
  - Rent \$1,150.00

## **Legislation and Policy**

9. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
10. Also relevant and considered in this decision is the following section of the *Residential Tenancies Act, 2018: Section 17: Record of tenant's payments*.

### **Issue 1: Rent \$1,150.00**

#### Landlord's Position

11. The landlord was unsure if they had a written rental agreement, he initially believed that the agreement was verbal. The tenant moved in the end of December 2020 and her agreement begins 01-January-2021, she moved out 22-February-2023. He believed she pays \$850.00 rent on the first day of each month. He said he receives payments from two different income support agencies and he was unable to determine who the agencies are, or the amount each is responsible for. He said the tenant paid a security deposit of \$410.00.
12. After it was determined by the tenant's evidence (TT#02) of a written rental agreement; the landlord confirms that the tenant pays \$825.00 a month rent. As there was a note on the written agreement that the security deposit wasn't received at the time of signing he questions whether it was every received.
13. The landlord submitted a rent ledger (LL#02) showing that the tenant owes \$300.00 for 01-January-2023 and \$850.00 for 02-February-2023. He said that the authorized representative had provided him a letter showing that some of the payment of the \$300.00 has been paid and that the rent for February should show \$825.00.
14. The landlord explained that he has other rentals and he was receiving a lump sum payment from income support. After other tenants moved out, he realized that the full payment was not coming in for this tenant.
15. The landlord said that the tenant had given him notice and he expected her to move on 01-February-2023 however she did not move until 22-February-2023. On 01-February-2023 he was going to do the final inspection. He said that the authorized representative told him at that time, that the tenant was sick and couldn't do the inspection that day. On 06-February-2023 he went in to do the inspection and the tenant and two other people were still living there. Finally, on 22-February-2023 the tenant had moved out. He did have a person lined up to rent, but when the tenant stayed past the 01<sup>st</sup> he found another renter as soon as she moved.
16. He is seeking reimbursement of rent owed for the month of February.

#### Tenant's Position

17. The authorized representative provided the rental agreement (TT#02) signed between the landlord and tenant. She explained that rent is noted as \$825.00 not \$850.00. She states that the security deposit would have automatically been paid by income support.

She explains that the tenant is supported by both Income Support and Mental Health and Addictions with Eastern Health.

18. She provided documentation showing that two payments were made by Mental Health and Addictions for their portion of rent support provided to the tenant (TT#03) showing that a payment was made on 01-November-2022 of \$151.50 for the first two weeks of November and another on 12-January-2023 of \$575.50 for the period up to 31-January-2023. She does acknowledge that the rent for February would have gone to the tenant's new landlord.
19. The authorized representative said that the landlord had told them that he was selling the house and that the tenant's agreement was going to be terminated 31-October-2022. They were struggling to find housing, she discussed this with the landlord and he told her that he was doing renovations and that if the tenant could tolerate the noise, she could continue to live there until they found housing.
20. The authorized representative said that they found a place and they did their best to have the tenant moved. There were storms and issues with getting a truck. She had told him that they were leaving the middle of February and she said he refused to take a daily rate.

## Analysis

21. In accordance with Section 17 of the Residential Tenancies Act, 2018: as follows:

### *Record of tenant's payments*

***17. (1) A landlord shall maintain a complete and up-to-date record of***

***(a) rent and other money received from a tenant; and***

***(b) the receipt and disbursement of a security deposit and interest under section 14.***

***(2) A record required under subsection (1) shall identify the tenant and residential premises to which the money relates.***

***(3) Upon the request of a tenant, a landlord shall provide a tenant with a receipt for rent or other money paid to the landlord in relation to the residential premises.***

22. The landlord in this file has shown that not only does he not have an up to date, accurate rent ledger, he has no idea the amount of rent agreed upon or the rent paid. The authorized representative has shown proof of payment up to the end of January and she has acknowledged that the February payment was not paid to the landlord.
23. In light of the authorized representative's acknowledgement that rent was not paid, I will award the landlord a daily rate of rent, up to and including the tenant's last day of occupancy 22-February-2023 totaling \$596.64; as follows:

$$\begin{aligned} \$825.00 \times 12 \text{ months} &= \$9,900.00 \text{ per year} \\ \$9,900.00 \text{ divided by } 365 \text{ days} &= \$27.12 \text{ a day} \\ \$27.12 \times 22 \text{ days} &= \$596.64 \text{ owed} \end{aligned}$$

## Decision

24. The tenant shall pay to the landlord \$596.64 rent owed.

### Issue 2: Security deposit \$410.00

25. The landlord questioned whether the tenant had paid the security deposit, as there was a note on the rental agreement, provided by the tenant that the deposit was not paid on the day the agreement was signed. The authorized representative explained in paragraph 17 that Income Support would have made that payment automatically after the tenant moved in. It is my experience that this is the case and I determine that the security deposit of \$410.00 has been paid.

26. As I have determined that the tenant did pay the security deposit of \$410.00 and there is an award against the tenant, the deposit will be considered in relation to the award as the deposit is the property of the tenant

27. 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.*

28. The security deposit is the property of the tenant and held in trust by the landlord. I find the landlord shall therefore retain the security deposit totaling \$410.00 against monies owed.

### Issue 3: Hearing expenses reimbursed \$20.00

29. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#03) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

### Summary of Decision

30. The tenant shall pay to the landlord \$206.64 for rent and hearing expenses as follows:

• Rent .....	\$596.64
• Security deposit applied .....	(410.00)
• Hearing expenses .....	<u>20.00</u>
• Total.....	<u><u>\$206.64</u></u>

April 3, 2023

Date

Jacqueline Williams, Adjudicator  
Residential Tenancies Office