

Residential Tenancies Tribunal

Application 2023-0625-NL
Application 2023-0700-NL

Decision 23-0625-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 2:03 p.m. on 7-September-2023.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.
3. The respondent and counter applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.

Preliminary Matters

4. There was a written month to month rental agreement which commenced on 16-January-2023. The tenant vacated the unit on 30-June-2023. Rent was \$850.00 including utilities, paid on the first of each month. A security deposit of \$450.00 was paid on 11-January-2023.
5. The tenant testified that he had served the landlord with the notice of hearing electronically by email on 22-July-2023. The respondent and counter applicant confirmed receiving the document on that date. The landlord stated that she then served the tenant with her counter document electronically by email on 23-August-2023 (LL#1). The tenant confirmed receiving the document on that day. In accordance with the *Residential Tenancies Act, 2018*, this is good service.

Issues before the Tribunal

6. The tenant is seeking:
 - a. Refund of security deposit \$450.00
7. The landlord is seeking:
 - a. Validity of termination notice
 - b. Rent paid \$850.00
 - c. Security Deposit applied against payment owed \$450.00
 - d. other \$321.90

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 Act, 2018*: Section 14; Security Deposit, Section 23; Interference with peaceful enjoyment and reasonable privacy, Section 34: Requirements for notices and Section 10; Statutory conditions.

Issue # 1: Validity of Termination Notice Rent Paid \$850.00

Relevant Submission

10. The landlord submitted a copy of a termination notice that was given to her by the tenant, it was received electronically on 25-June-2023 to vacate the premises on 30-June-2023 (LL#2). The landlord is also seeking outstanding rent in the amount of \$850.00 for the month of July after the tenant vacated and submitted a rental ledger to support her claim (LL#3).

Landlord's Position

11. The landlord testified that the tenant sent her a text message on 25-June-2023 stating that he will be moving out on the 30-June-2023 as he no longer feels safe in the unit. The landlord stated that she entered the unit when the tenant had not been there for weeks due to a potential safety concern. The landlord testified that the window was left open and there was a continuous period of heavy rain and she was concerned as the heater below the open window was filling up with rain water and could potentially create a fire hazard.
12. The landlord stated that she resides in the main area of the home and she also works from home so she was always somewhat aware of the tenant's comings and goings. The landlord stated that the tenant had not been around for weeks and she entered the unit as she felt that the unit could be at risk. The open window and the rain seeping in to the area with a heater could potentially cause a fire.
13. The landlord stated that the tenant gave her an invalid termination notice and as such, she lost a month's rent for July 2023. The landlord stated that the tenant gave the early notice as a result of her entering the unit to close the window. The landlord stated that entering the unit was an isolated incident out of caution and should not have caused the tenant any distress and certainly it should not have caused him to feel unsafe in his home. The landlord stated that due to an invalid termination notice, she is seeking 1 months' rent in the amount of \$850.00.

Tenant's Position

14. The tenant testified that he did not feel safe in his unit as his landlord entered the premises when he was not there. The tenant stated that he feels that he had grounds to give an early termination notice under the circumstances and he do not feel that he should have to pay rent for the month of July when he was not living there.

Analysis

15. Statutory condition 5, set out in section 10.(1) of the *Residential Tenancies Act, 2018* states:

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:

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 ...

7(b) Peaceful enjoyment and reasonable privacy- The landlord shall not unreasonably interfere with the tenant's reasonable privacy and peaceful enjoyment of the residential premises, a common area or the property of which they form a part.

16. Section 23 of the *Residential Tenancies Act, 2018* states:

Notice where landlord contravenes peaceful enjoyment and reasonable privacy

23.(1) Notwithstanding subsection 18(1) and paragraph 18(3)(a), where a landlord contravenes statutory condition 7(b) set out in subsection 10(1), the tenant may give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises on a specified date not less than 5 days, but not more than 14 days, after the notice has been served.

(2) In addition to the requirements under section 34, a notice under this section shall

- a) Be signed by tenant;**
- b) State the date on which the rental agreement terminates and the tenant intends to vacate the residential premises; and**
- c) Be served in accordance with section 35.**

17. Section 34 of the *Residential Tenancies Act, 2018* states:

Requirements for notices

34. A notice under this Act shall

- i. Be in writing in the form prescribed by the Minister;**
- ii. Contain the name and address of recipient;**
- iii. Identify the residential premises for which the notice is given; and**
- iv. State the section of this Act under which the notice is given.**

18. I accept the tenants claim that he felt that his privacy was contravened however the tenant did not give a proper notice under section 34 of the Act as stated above. The tenant sent a text message to the landlord on 25-June-2023 stating that he felt unsafe in his unit and that

he would be vacating on 30-June-2023. That is 4 days' notice which does not meet the notice requirements of not less than 5 days as per Section 23 stated above. The notice did not identify the residential premises nor did it state the relevant section of the *Act* under which it was given as per Section 34 of the *Act* as stated above. For those reasons, the termination notice was not a valid notice.

19. I find that the termination notice was not a valid notice.
20. With regards to the outstanding rent of \$850.00 for the month of July, I find that without a proper termination notice under Section 23 of the *Act*, the tenant is required to pay rent for the month of July.
21. I find the tenant is responsible for rent for the month of July 2023 in the amount of \$850.00.

Decision

22. The tenant's termination notice is not a valid notice.
23. The landlord's claim for rent paid succeeds in the amount of \$850.00.

Issue #2: Security Deposit applied against monies owed \$450.00 Refund of Security Deposit \$450.00

24. Section 14 of the Residential Tenancies Act, 2018 deals with security deposits, and the relevant subsections state:

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.*
25. I find that as the landlord has been successful in her claim for rent paid as per paragraph 23, the landlord has the right to retain the security deposit to be applied against monies owed.
26. I find that the tenant is not entitled to a refund of the security deposit.

Decision

27. The landlord's claim to apply the security deposit against monies owed succeeds in the amount of \$450.00.
28. The tenant's claim for refund of security deposit does not succeed.

Issue # 3: Other (Lost Wages) \$321.90

29. The landlord is seeking \$321.90 for lost wages for June 5-6, 2023.

Analysis

30. I find that any of the landlord's time dealing with landlord tenancy issues is considered to be costs incurred for the purpose of doing business.

31. I find that the landlord is not entitled to lost wages as a result of dealing with tenant issues.

Decision

32. The landlord's claim for "Other" (lost wages) does not succeed.

Issue # 4: Hearing Expenses \$20.00

33. The landlord paid an application fee of \$20.00 to the Landlord Tenancies Board and provided a copy of the receipt (LL#4).

34. As the landlord's claim has been successful, the tenant shall pay the \$20.00.

Decision

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

Summary of Decision

36. The tenant shall pay the landlord \$420.00 as follows:

Rent.....	\$850.00
Hearing expenses.....	20.00
Less Security deposit	450.00

Total	<u>\$420.00</u>
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37. The tenant's claim for refund of security deposit does not succeed.

September 20, 2023

Date

Pamela Pennell
Residential Tenancies Office