

Residential Tenancies Tribunal

Application 2023-0745-NL

Decision 23-0745-00

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 06-December-2023.
2. The applicant, [REDACTED] hereinafter known as the tenant, appeared by teleconference.
3. The respondent, [REDACTED] hereinafter known as the landlord, also appeared by teleconference.

Issues before the Tribunal

4. Should the tenant receive a refund of rent paid?
5. Should the tenant receive compensation for deprivation of utilities?
6. What is the disposition of the security deposit?

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* (the *Act*).

Issue 1: Rent refund

The Tenant's Position

8. The tenant submits that she seeks a refund of \$219.36 for eight days rent paid from 22-July-2023 to 31-July-2023, during which time she says she was unable to access the apartment because she was institutionalized due to a mental health episode that she alleges was caused by the landlord.

Landlord's Position

9. The landlord submits that the tenant is not owed rent and did not have the right to access the apartment during that time period regardless, as the tenant had been evicted for cause in a previous decision by this tribunal issued 21-July-2023.

Analysis

10. Generally, a person held in a healthcare facility is not considered to be deprived of the use of their residential premises. However, in this case the applicant was legally deprived of the use and enjoyment of the premises by means of eviction. Checking file 2023-0564-NL in this tribunal's records shows that the tenant had been evicted under s. 18 of the Act, which is an eviction without cause.
11. According to the evidence before me the tenant paid rent for the full month of July 2023 but did not have the use of the property from 22-July-2023 to 31-July-2023. Normally, the tenant would not be responsible for rent for days which she did not have access to the property. However, I find based on the evidence presented that the tenant left the premises in such a condition as to render it unreasonable to expect the landlord to find a new tenant before the end of the month, in contravention of the tenant's duties under the rental agreement. On this basis the tenant's claim for rent fails.

Issue 2: Deprivation of utilities

The Tenant's Position

12. The tenant submits that she is owed compensation for 11 days where she did not have internet service, when internet service was included as part of the lease agreement.

The Landlord's Position

13. The landlord has alleged that the tenant somehow 'hacked' her internet service and took control of it, locking the landlord out. The landlord admits internet access was part of the rental agreement but that it did not extend to the tenant taking over her account and therefore she felt she had to cancel the service.

Analysis

14. The landlord admitted that internet access was part of the rental agreement and admitted that the tenant did not have internet access for 11 days. An "intent to rent" document (T#1) was provided which lists cable and Wi-Fi as included in the month's rent and is signed by the landlord.
15. The landlord alleges that the tenant has committed some type of cybercrime against her. Such an allegation is beyond the scope of this tribunal and is irrelevant to her obligations to the tenant.

16. The tenant submitted that she is owed \$108.14 to cover the expenditures she made in maintaining her internet access. However, the only receipts provided are T#2, from an Internet Service Provider at \$48.86 and T#3, another receipt from the same provider at \$20.00. It is the responsibility of the applicant to provide all necessary materials. Therefore the tenant is awarded \$68.86.

Issue 3: Security Deposit

The Tenant's Position

17. The tenant wishes for her security deposit to be returned.

The Landlord's Position

18. The landlord submits that the damage deposit should not be returned as she alleges that the tenant extensively damaged the apartment and abused the utilities included with rent.

Analysis

19. Under s.19(11) of the *Act*, when a tenant applies for the disposition of the security deposit, the landlord has 10 days from the date they are served the notice of application. The landlord did not submit a claim. S. 19(12) of the *Act* says that a landlord who does not make an application under subsection (11) shall return the security deposit to the tenant. The landlord failed to submit a claim on time and the only possible result is that the security deposit must be returned to the tenant.

Decision

20. The tenant is awarded \$68.86 in compensation for the deprivation of utilities.
21. The tenant's claim for rent is denied.
22. The landlord must return to the tenant the \$425.00 security deposit.
23. As the tenant's claim was partially successful, she is entitled to costs. The tenant is awarded \$20 for the application fee.

Summary of Decision

24. The landlord shall pay to the tenant \$513.86 as follows:

Utilities	\$68.86
Security Deposit	\$425.00
Hearing expenses	\$20.00

Total \$513.86

04-January-2024

Date

Seren Cahill
Residential Tenancies Office