

Residential Tenancies Tribunal

Application 2023-0889-NL

Decision 23-0889-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:51 p.m. on 20-February-2024.
2. The applicant, [REDACTED] hereinafter referred to as “the landlord” attended by teleconference. Also [REDACTED] (Property Manager) attended as a support person.
3. The respondents, [REDACTED] (spokesperson), [REDACTED] and [REDACTED] hereinafter referred to as “the tenants” attended by teleconference.

Preliminary Matters

4. The landlord submitted 3 affidavits with her application stating that she had served the tenants individually with the notice of hearing electronically to the address provided on the rental agreement: [REDACTED] on 30-January-2024 (LL#1). The tenants all agreed to receiving the documents on that date. In accordance with the *Residential Tenancies Act, 2018* this is good service.
5. There was a written term rental agreement which commenced on 1-September-2022. The tenants vacated the unit on 24-September-2023. Rent was \$2,500.00 per month due on the first of each month. A security deposit of \$1,250.00 was paid on 31-August-2022 and is in the landlord’s possession.
6. The landlord amended the application to delete vacant possession, to apply the security deposit against monies owed and to seek hearing expenses.

Issues before the Tribunal

7. The landlord is seeking:
 - Rent paid \$24,750.00
 - Possessions returned \$1,000.00
 - Hearing expenses \$20.00
 - Security deposit applied against monies owed \$1,250.00

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 and Section 19: Notice where failure to pay rent.

Issue # 1: Rent Paid \$24,750.00

Relevant Submissions:

10. The landlord testified that rent has been outstanding since the commencement of the tenancy, and she is seeking rent to be paid in the amount of \$24,750.00. The landlord submitted a copy of the rental ledger to support her claim (LL#2). See copy of rental ledger below:

Sept.	2022	250.00
Nov	- 2022	2500.00
Dec	- 2022	2500.00
Jan	- 2023	2500.00
Feb	- 2023	2500.00
March	- 2023	2500.00
April	- 2023	2500.00
May	- 2023	2500.00
June	- 2023	2500.00
July	- 2023	2500.00
Aug.	- 2023	2000.00

Landlord's Position

11. The landlord testified that rent is outstanding since the commencement of the tenancy in September 2022, and she is seeking rent to be paid in full.

Tenant's Position

12. The tenants did not dispute that they owe rent however they did dispute that the amount was \$24,750.00. The tenant spokesperson stated that the amount is closer to \$12,000-\$14,000 and the tenants entered proof of payments into evidence to support their claim (TT#1).

Analysis

13. Section 19 of the *Residential Tenancies Act, 2018* states:

Notice where failure to pay rent

19. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),

(b) where the residential premises is

- i. rented from month to month,**
- ii. rented for a fixed term, or**
- iii. a site for a mobile home, and**

the amount of rent payable by a tenant is overdue for 5 days or more, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 10 days after the notice is served on the tenant.

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

- a. be signed by the landlord;**
- b. state the date on which the rental agreement terminates and the tenant is required to vacate the residential premises; and**
- c. be served in accordance with section 35.**

14. Non-payment of rent is a violation of the rental agreement. Rent is required to be paid under a rental agreement by a tenant(s) during the use or occupancy of a residential premises.

15. The tenants disputed owing \$24,750.00 and both parties could not agree on the correct balance owing thus I accepted the landlord's rental ledger and made adjustments based on the evidence submitted by the tenants where they could show that payments were made to the landlord. The rental ledger was amended to reflect the payments as shown by the tenants. See amended rental ledger below:

Amended Rental Ledger 2023 0889-NL			
Date	Action	Amount	Total
August 31, 2022	Balance	\$0.00	\$0.00
September 1, 2022	Rent due	\$2,500.00	\$2,500.00
September 1, 2022	Payment	-\$2,250.00	\$250.00
November 1, 2022	Rent due	\$2,500.00	\$2,750.00
November 1, 2022	Payment	-\$1,700.00	\$1,050.00
December 1, 2022	Rent due	\$2,500.00	\$3,550.00
January 1, 2023	Rent due	\$2,500.00	\$6,050.00
January 6, 2023	Payment	-\$2,500.00	\$3,550.00
February 1, 2023	Rent due	\$2,500.00	\$6,050.00
March 1, 2023	Rent due	\$2,500.00	\$8,550.00
April 1, 2023	Rent due	\$2,500.00	\$11,050.00
May 1, 2023	Rent due	\$2,500.00	\$13,550.00
June 1, 2023	Rent due	\$2,500.00	\$16,050.00
July 1, 2023	Rent due	\$2,500.00	\$18,550.00
August 1, 2023	Rent due	\$2,500.00	\$21,050.00
August 1, 2023	Payment	-\$500.00	\$20,550.00

16. I did not include the months of October 2022 and September 2023 in the amended rental ledger as those months were not included in the landlord's rental ledger and as such were not amounts sought by the landlord in her application. I was not confident that either party was aware of the correct balance owing and as such, I accepted the landlord's rental ledger and only made adjustments where the tenants could legitimately show that payments were made.

17. I find that the rent is outstanding in the amount of \$20,550.00 for the period of 1-September-2022 to 31-August-2023.

Decision

18. The landlord's claim for rent succeeds in the amount of \$20,550.00.

Issue # 2: Possessions Returned \$1,000.00

Landlord's Position

19. The landlord testified that the tenants removed 3 cable boxes from the unit when they vacated. The landlord testified that the boxes belonged to *Bell Aliant* and cost \$333.00 each to replace.

Tenant's Position

20. The tenants disputed taking 3 cable boxes from the unit and the tenants spokesperson testified that there was only one cable box in the living room when they moved in, and a worker of the landlord took that box out of the unit at the beginning of the tenancy. The tenants testified that they did not use *Bell Aliant* as a cable supplier but rather had a cable contract with *Rogers*.

Analysis

21. The onus is on the landlord to show the contents in the unit at the beginning of the tenancy and what is in the unit at the end of the tenancy. This is usually done by providing a *premises condition report*. The landlord failed to provide any proof to show that there were 3 cable boxes in the unit at the beginning of the tenancy and she also failed to show that she paid \$1,000.00 to replace the boxes. As such, I find that the tenants are not responsible for the cost to replace the cable boxes.

Decision

22. The landlord's claim for possessions returned does not succeed.

Issue # 4: Hearing expenses \$20.00

23. The landlord paid an application fee of \$20.00 to *Residential Tenancies* and provided a copy of the receipt (LL#3).
24. As the landlord's claim has been partially successful, the tenant shall pay the \$20.00.

Decision

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

Issue # 5: Security deposit applied against monies owed \$1,250.00

Analysis

26. 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).

27. The landlord's claim for losses has been successful as per paragraphs 18 and 25, and as such the security deposit shall be applied against monies owed.

Decision

28. The landlord's claim for security deposit to be applied against monies owed succeeds.

Summary of Decision

29. The tenants are not responsible for the replacement costs of cable boxes.

30. The tenants shall pay the landlord \$19,320.00 as follows:

Rent	\$20,550.00
Hearing expenses.....	20.00
Less Security deposit	<u>\$1,250.00</u>

Total..... **\$19,320.00**

March 5, 2024

Date

Pamela Pennell
Residential Tenancies Office