

Residential Tenancies Tribunal

Application 2023-0914-NL

Decision 23-0914-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:46 p.m. on 8-January-2024.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.
3. The respondent, [REDACTED], herein referred to as “the landlord” attended by teleconference.

Preliminary Matters

4. The tenant submitted an affidavit with her application stating that she had served the landlord with the notice of hearing electronically by email to; [REDACTED] on 19-October-2023 (TT#1). The landlord confirmed receiving the document. In accordance with the *Residential Tenancies Act, 2018* this is good service.
5. There was a written fixed rental agreement whereby the tenant rented a room in a boarding house which commenced on 1-July-2023. The tenant vacated the premises on 15-September-2023. Rent was \$700.00 per month due on the first of each month. A security deposit of \$490.00 was paid on 14-July-2023 and \$425.00 was returned to the tenant leaving \$65.00 in the possession of the landlord.
6. The tenant amended her application to decrease refund of security deposit from \$490.00 as per application to \$65.00 as the landlord returned \$425.00 and to delete *premises vacated* as it is not applicable. The tenant is also seeking hearing expenses.

Issues before the Tribunal

7. The tenant is seeking:
 - a. Validity of termination notice
 - b. Refund of rent \$350.00
 - c. Compensation for inconveniences \$2055.00
 - d. Refund of Security Deposit \$65.00
 - e. Hearing expenses \$20.00

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, Section 10: Statutory conditions and Section 24: Notice where tenant contravenes peaceful enjoyment and reasonable privacy. Also relevant and considered is the following section of the *Residential Tenancies Policy Manual*: Section 12-1: Recovery of Fees.

Issue # 1: Validity of Termination Notice

Relevant Submission

10. The tenant submitted a copy of a termination notice received from the landlord dated 11-September-2023 to vacate the premises on 18-September-2023 under Section 24 of the *Residential Tenancies Act, 2018* (TT#2).

Tenant's Position

11. The tenant stated that she received a termination notice from the landlord on 11-September 2023 with notice to vacate the premises on 18-September-2023 under Section 24 of the *Act*. The tenant stated that she disputes that she has caused any interference of peaceful enjoyment or any disruption to the reasonable privacy of the landlord or any other tenant residing within the unit. The tenant stated that she vacated the unit on 15-September-2023.

Landlord's Position

12. The landlord testified that he had grounds to give the termination notice under Section 24 of the *Act* as the tenant was making noises late at night and disturbing him and the other tenants within the unit. The landlord submitted audio to support his claim that there were noises coming from the tenant's bedroom at night (LL#1).

Analysis

13. Section 24 of the *Residential Tenancies Act, 2018* states:

Notice where tenant contravenes peaceful enjoyment and reasonable privacy

24. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes statutory condition 7(a) set out in subsection 10(1), the landlord may give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises on a specific date not less than 5 days after the notice has been served.

14. The relevant subsections of Section 10 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 the 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:

7. Peaceful enjoyment and reasonable privacy –

- (a) The tenant shall not unreasonably interfere with the rights and reasonable privacy of a landlord or other tenants in the residential premises, a common area or the property of which they form a part.

15. The termination notice was given on 11-September-2023 to vacate the premises on 18-September-2023 which meets the timeline of *not less than 5 days* after the notice has been served as per Section 24 as stated above.

16. With regards to the validity of the notice under Section 24 of the *Act*, I find that the landlord failed to show that the tenant contravened peaceful enjoyment and reasonable privacy as stated above. The landlord submitted audio exhibit into evidence which, when listened to, did not support the landlords' grounds of interference. The landlord failed to provide testimony from other tenants and failed to provide any credible evidence to support his claim. For those reasons, I find that the termination notice given on 11-September-2023 under Section 24 is not a valid notice.

Decision

17. The tenant's request for a determination of the validity of the termination notice, is that the notice is not a valid notice.

Item # 2: Refund of Rent \$350.00

Tenant's Position

18. The tenant is seeking a refund of rent for the second half of the month of September 2023 in the amount of \$350.00 as she was asked to vacate the premises by 18-September, and she left on the 15-September. The tenant testified that she was asked to leave, and she made arrangements to find a new place and left as soon as she could. The tenant stated that she should not be responsible for rent for the time she was not residing at the unit. The tenant is seeking a refund of rent for the period of September 16th-30th in the amount of \$350.00.

Landlord's Position

19. The landlord does not dispute that the tenant paid rent in full for the month of September. The landlord did not express any reason as to why he felt the need to retain rent for the second half of September except to say that the tenant left the room in a dirty condition, and he had to clean the room.

Analysis

20. The tenant was asked to vacate the premises on the 18-September-2023 as per the termination notice given by the landlord on 11-September-2023. The tenant vacated a few days earlier on the 15-September to secure a new place to live. I asked the landlord if, and when, he re-rented the room and he responded that he re-rented the room on 25-September-2023. The landlord cannot accept rent from 2 different tenants for the same period of time and for this reason, the landlord shall return the rent paid to the tenant for the period that the tenant did not reside at the premises. I find that the tenant is not responsible for rent for the period of 16-September to 30-September and as such, I find that the landlord shall refund rent to the tenant in the amount of \$350.00.

Decision

21. The tenant's claim for refund of rent succeeds in the amount of \$350.00.

Item # 3: Compensation paid for inconveniences \$2055.00

Relevant Submission

22. The tenant is seeking compensation for inconveniences in the amount of \$2055.00 and she submitted an inconveniences ledger to support her claim (TT#3). See breakdown of list of inconveniences below:

Inconveniences Ledger 2023-0914-NL		
Action	Amount	Total
Last minute apartment search and cost to stay with friend	\$755.00	\$755.00
Taxi fare to friend's house and work	\$200.00	\$955.00
Allocated shift lost at work	\$500.00	\$1,455.00
friend taking time away from work to help move	\$100.00	\$1,555.00
Mental health	\$500.00	\$2,055.00

Tenant's Position

23. The tenant stated that she was forced to move out of her unit with very little notice which caused her a lot of stress and anxiety and she required the assistance of a friend to help with the move. The tenant stated that she needed to rely on taxi service to get to her friend's house where she went to stay in the short term and to get to work. The tenant stated that she was unable to attend some shifts at her place of work due to her new location and her overall mental health suffered due to the situation. The tenant is seeking \$2055.00 in overall compensation for her inconveniences.

Landlord's Position

24. The landlord did not make any comment on the tenant's claims for inconveniences and maintained that he gave a proper termination notice under the *Act*.

Analysis

25. With regards to the search for a new dwelling and having to pay rent in the middle of September to secure a place, I accept that the tenant had to find a new place in a short period of time, however refund of rent for the second half of September has been awarded as per paragraph 21. Tenants are required to pay rent for the use or occupation of a residential premises no matter where he/she resides and for those reasons, I find that the landlord is not responsible for the cost to the tenant to rent a new place of residence. With regards to the tenant's claim for taxi fares, they could potentially be awarded where a tenant is locked out of a unit and put in a unique situation whereby he/she needs to move immediately, but taxi fares to and from a place of work are not covered by *Residential Tenancies*. The tenant vacated the unit on 15-September with a termination date of 18-September, and as such I find that the tenant was not in a situation whereby she had to flee the residence immediately requiring the service of a

taxi. I find that the landlord is not responsible for any taxi fares. With regards to loss of work shifts and paying friends for their time, this is not a cost that is covered by *Residential Tenancies*. Finally, the tenants claim for \$500.00 for mental health reasons will also not be awarded as this tribunal does not compensate for pain and suffering.

26. I find that the landlord is not responsible for any of the items claimed by the tenant as inconveniences to her.

Decision

27. The tenant's claim for compensation for inconveniences does not succeed.

Item # 4: Refund of Security Deposit \$65.00

Analysis

28. 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).
- (12) A landlord who does not make an application in accordance with subsection (11) shall return the security deposit to the tenant.

29. I find that the landlord did not return the security deposit in full within the 10 day timeframe as set out in Section 14 stated above. Also, the landlord did not make a counter application within the timeframe allowable to *Residential Tenancies*. Therefore, I find that the landlord shall refund the security deposit to the tenant in the amount of \$65.00.

Decision

30. The tenant's claim for refund of security deposit succeeds in the amount of \$65.00.

Issue # 5: Hearing Expenses - \$20.00

31. The tenant paid an application fee of \$20.00 to *Residential Tenancies* and provided a copy of the receipt (TT#4).
32. In accordance with Section 12-1 of the *Residential Tenancies Policy Manual*, if an award does not exceed the amount of the security deposit, hearing expenses related to the filing fee will not be awarded. As the landlord's claim has been partially successful, and the amount awarded does not exceed the amount of the security deposit, the filing fee will not be awarded.
33. I find that the landlord is not responsible for the hearing expenses claimed.

Decision

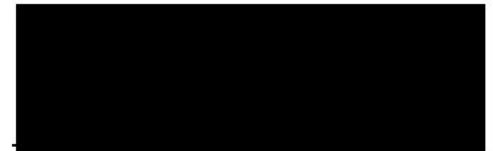
34. The tenant's claim for hearing expenses does not succeed.

Summary of Decision

35. The tenant's request for a determination of the validity of the termination notice is that the notice was not a valid notice.
36. The landlord shall pay the tenant \$415.00 as follows:

Refund of rent	\$350.00
Refund of security deposit	65.00
Total.....	<u>\$415.00</u>

January 17, 2024
Date



Pamela Pennell
Residential Tenancies Office