

Residential Tenancies Tribunal

Application 2023-No.1025-NL

Decision 23-1025-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 1:51 p.m. on 28-November-2023.
2. The applicant, [REDACTED] represented by [REDACTED] [REDACTED] hereinafter referred to as "the landlord" attended by teleconference.
3. The respondent, [REDACTED] [REDACTED] hereinafter referred to as "the tenant" attended by teleconference.

Preliminary Matters

4. The landlord submitted an affidavit stating that she served the tenant electronically with notification of the hearing on 27-October-2023 (LL#01). The tenant confirmed receipt of notification as stated by the landlord.
5. The tenant questioned why her son is not listed on the application. She explains that her son moved in May 2023 and was added to her rental agreement. The landlord clarified that the son was added as an occupant and is not a lease holder.

Issues before the Tribunal

6. The landlord is seeking:
 - Rent \$1,024.00
 - Damages \$812.17
 - Security deposit applied against monies owed \$300.00
 - Hearing Expenses \$20.00

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*.

8. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 14: Security deposit, Section 18: Notice of termination of rental agreement, and Section 34: Requirements for notices.

Issue 1: Rent \$1,024.00

Landlord's Position

9. The landlord submitted a rental agreement (LL#02) with the application. They entered a written monthly agreement with the tenant beginning 31-March-2020. The tenant pays a minimum of \$690.00 a month; the tenant's rent is subsidized and can fluctuate based on the gross family income. The rental period is from the 1st day of the month until the last day; rent is due the 1st day of each month. The landlord said that the tenant paid a security deposit of \$300.00 on 16-April-2020 and they are still in possession of the deposit.

10. The landlord stated that the tenant notified them that her son was going to move in with her for a few months. The son moved in May 2023. He was added as an occupant and the tenant was instructed to send in the son's proof of income. Rent was adjusted accordingly to \$1,024.00 a month. The increase in rent is due to the increase in household income caused by the addition of the son living in the residence. When the son moves out the tenant would be expected to provide proof of his new residence and then his income would no longer be factored into the rent owed.

11. The landlord said that the tenant's son contacted the office on 20-September-2023 by email (LL#03) he informed her at that time that they were moving out on 23-September-2023. The tenant's son stated that the reasons for moving are "excessive noise, vehicles causing noise pollution, unsanitary conditions due to garbage being strewn about, unsafe parking accommodations and that he was not added to the lease."

12. The landlord responded at that time that the tenant must provide one months' notice in accordance with the lease. On 27-September-2023 the landlord contacted the tenant's son and at that time he told her that they had moved, and the keys would be returned on Friday 28-September-2023.

13. The landlord disputes the notice, and she is seeking rent for October in lieu of notice. She confirms that the unit has been offered to a new tenant but is currently not occupied.

14. The landlord submitted a rent ledger (LL#04), as follows:

Rent ledger
2023-1025-NL

Date	Action	Amount	total
1-May-23	rent due	1024.00	1024.00
5-May-23	Payment	-690.00	334.00

1-Jun-23	rent due	1024.00	1358.00
1-Jun-23	Payment	-690.00	668.00
1-Jul-23	rent due	1024.00	1692.00
1-Jul-23	Payment	-690.00	1002.00
1-Aug-23	rent due	1024.00	2026.00
1-Aug-23	Payment	-690.00	1336.00
1-Sep-23	rent due	1024.00	2360.00
1-Sep-23	Payment	-690.00	1670.00
7-Sep-23	Payment	-1668.00	2.00
1-Oct-23	rent due	1024.00	1026.00

15. The landlord explains that the tenant inquired what the outstanding balance was in September and made a payment for her son's portion of the rent due.

Tenant's Position

16. The tenant was confused why the son was not listed on the rental agreement as a tenant instead of an occupant.

17. The tenant stated that she inquired about money owed and was given the amount of \$1,668.00 and she paid this balance in full so she doesn't understand why there is a \$2.00 balance owed in September because she was under the impression everything was up to date.

18. The tenant states that she informed the staff she normally deals with, that they were moving in early September and that the email from her son on 20-September-2023 was not the first notification.

Analysis

19. The tenant is required to give notice to the landlord in accordance with the Residential Tenancies Act, 2018. Requirements for notice are to be in compliance with Section 34 as follows:

Requirements for notices

34. A notice under this Act shall

- (a) be in writing in the form prescribed by the minister;*
- (b) contain the name and address of the recipient;*
- (c) identify the residential premises for which the notice is given; and*
- (d) state the section of this Act under which the notice is given.*

20. The verbal notice given by the tenant would not be in compliance with the Act as it must be in writing. The written notice given by the tenant's son is also not in compliance as it doesn't contain the required information of the address or state the section of the Act under which it is given.
21. As the notice given by the tenant is not valid, a notice given under Section 18 would require one month's notice ending on the last day of the rental period, in this case, 31-October-2023, Section 18 of the *Act* is as follows:

Notice of termination of rental agreement

18. (1) A tenant shall give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises

- (a) ***not less than 7 days before the end of a rental period where the residential premises is rented from week to week;***
- (b) ***not less than one month before the end of a rental period where the residential premises is rented from month to month; and***
- (c) ***not less than 2 months before the end of the term where the residential premises is rented for a fixed term.***

22. As there is not a valid termination notice the tenant is responsible for the payment of rent up to the end of the month of October. However, I find that the tenant would be only responsible for her portion of the rent totaling \$690.00 as shown in paragraph 9. The tenant's son's portion of the rent is only considered when he resides in the apartment and this additional cost is only required when he resides in the unit. I acknowledge that the tenant is required to show proof that the tenant no longer lives there, however it is reasonable to believe that the return of keys and the landlord regaining possession of the property should be adequate proof that the tenant's son has moved.
23. I do accept the landlord's rent ledger showing that the tenant owed \$2.00 in September 2023 and I have amended the ledger to show that the tenant owes her portion of the rent of \$690.00 for October 2023; as follows:

Amended rent ledger

2023-1025-NL

1-Sep-23	Payment	-690.00	1670.00
7-Sep-23	Payment	-1668.00	2.00
1-Oct-23	rent due	690.00	692.00

24. I find that the tenant shall pay the landlord the rent owed totaling \$692.00.

Decision

25. The landlord's claim for rent succeeds in the amount of \$692.00.

Issue 2: Damages \$812.17

Landlord's Position

26. The landlord submitted a damages ledger/billing (LL#05) as follows:

Damage	compensation
Half sheet drywall	\$10.00
Labour to install, tape and plaster hole	110.67
Removal of items left behind	690.00
• Total	\$812.17

27. The landlord submitted pictures from the move out inspection (LL#06) showing that there was a large hole in the hallway as well as items left behind, such as furniture that had to be removed.

28. She is seeking reimbursement of the costs charged to repair the hole and removed the items.

Tenant's Position

29. The tenant said that someone broke into her home and threw her against the wall and that there is a police file open. This caused the damage to the hallway wall.

30. The tenant confirms that she did leave items behind that she was unable to use and that she told the landlord they could give the items to someone who needed them.

Analysis

31. I sympathize with the tenant that she stated that she was a victim of violence and that during this act the wall was damaged, however tenants are to return property to the landlord in the same condition as when they moved into the property.

32. In accordance with the tenant's signed rental agreement (LL#02) under "*Tenant's Obligations, Alterations: (ii) The Tenant shall be responsible for returning ALL painted areas to the original color and condition, and the unit to the original condition, upon termination of the Lease Agreement.*" The tenant is responsible to return the unit in the same condition she received it. The burden of the cost of the repair to the wall is that of the tenant not the landlord.

33. Additionally, I appreciate that the tenant thought she was making a gesture of kindness in stating that her furniture could be passed on to another person requiring help. However, this also cannot be the role of the landlord. When a tenant moves out, the rental is supposed to be in the same condition as when they moved in, the rental should

be ready for the next occupants to take possession. The landlord cannot move someone in when there are large holes in the hallway wall and used furniture still within the home.

34. The landlord has shown that the damages exist, and the tenant does not dispute the testimony or evidence of the landlord. The landlords billing (LL#05) shows the value of the cost of the damages. I accept the testimony and evidence and find that the tenant shall pay \$812.17 for damages to the landlord.

Decision

35. The landlord's claim for damages succeeds in the amount of \$812.17.

Issue 3: Security deposit applied against monies owed \$300.00

Relevant Submissions

36. The landlord stated in paragraph 9 that the tenant paid a security deposit of \$300.00 on 16-April-2020 and they are still in possession of the deposit. The landlord is requesting to retain the security deposit against monies owed.

Analysis

37. The landlord's claim for losses has been successful, paragraphs 25 and 34, and they shall retain the deposit as per Section 14 of the *Residential Tenancies Act, 2018*, see below:

Security deposit

14. (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

Decision

38. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$300.00.

Issue 4: Hearing expenses reimbursed \$20.00

39. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#07) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

Summary of Decision

40. The tenant shall:

- Pay the landlord \$1,224.17 as follows:
 - Rent \$692.00
 - Damages 812.17
 - Hearing expenses 20.00
 - Security deposit applied (300.00)
 - Total \$1,224.17

The landlord

- Shall retain the security deposit of \$300.00.

January 8, 2024

Date

[Redacted]
Jacqueline Williams, Adjudicator
Residential Tenancies Office