

Residential Tenancies Tribunal

Application 2023-1036-NL

Decision 23-1036-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:53 p.m. on 12-December-2023.
2. The applicants, [REDACTED] and [REDACTED] hereinafter referred to as “the tenants” attended by teleconference.
3. The respondent, [REDACTED] hereinafter referred to as “the landlord” attended by teleconference. Also present was [REDACTED]

Preliminary Matters

4. The tenants submitted an affidavit with their application stating that they had served the landlord with the notice of hearing electronically by email to; [REDACTED] on 6-November-2023 (TT#1). The landlord confirmed receiving the document on that date. In accordance with the *Residential Tenancies Act, 2018* this is good service.
5. There was a written month to month rental agreement commenced on 18-September-2023. The tenants vacated the unit on the same day. Rent was \$800.00 to be paid on the 18th of each month. A security deposit of \$400.00 was paid on 9-September-2023.

Issues before the Tribunal

6. The tenants are seeking:
 - a. Refund of rent \$800.00
 - b. Refund of security deposit \$400.00

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 and Section 34: Requirement of Notices.

Issue # 1: Refund of Rent \$800.00

Tenant's Position

9. The tenants testified that they entered into the rental agreement with the landlord from [REDACTED] to rent a room in his house, they stated that they had not viewed the room or the unit prior to arriving. The tenants stated that they were misled, they never received any photographs and information was withheld from them on purpose. The tenants stated that the room was not what they expected and upon arrival, they were surprised with the condition of the premises and decided it best not to stay there. The tenants stated that the room was untidy, stuffy and it had belongings there from a previous tenant. The tenants stated that the grass outside the windows was extremely high which made them feel uneasy. The tenants stated that they had paid rent for the month of September and a security deposit, which they are seeking to have returned.

Landlord's Position

10. The landlord disputed that he misled the tenants in any way and stated that although they were not in this country at the time of entering into the agreement, they could have had someone view the unit on their behalf. The landlord stated that he was never asked for photographs and was under the understanding that everything was satisfactory. The landlord stated that he kept the rent and security deposit to cover lost rent as he had trouble renting the room in September and October.

Analysis

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

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.

12. I accept that the tenants were disappointed with the rental unit and decided not to stay there. In accordance with Section 34 of the *Act* as stated above, the tenants were required to give a proper termination notice to the landlord in writing stating the applicable section of the *Act*. The tenants ultimately abandoned the unit without proper notice to the landlord, and as such are responsible for rent for the month of September. I asked the landlord if he was successful in renting the unit in September and he responded that he made every effort to mitigate his losses. The landlord stated that he could have rented the room to 1 person at a lower rate of rent but wishes to seek more suitable tenants (a couple) to receive the same amount of rent as the tenants had agreed to pay.

13. When entering into a rental agreement, the onus is on the tenants to be aware of what and where they are renting and once in a residential tenancy relationship, a proper notice to terminate is required. I find that with regards to the refund of rent for the month of September, the tenants are not entitled to a refund of rent.

Decision

14. The tenant's claim for refund of rent does not succeed.

Issue #2: Refund of Security Deposit \$400.00

Relevant Submission

15. The tenant is seeking a refund of the security deposit in the amount of \$400.00 and submitted a copy of the rental agreement as proof of payment (TT#2). 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.

16. In accordance with Section 14, the landlord has not made an application to *Landlord Tenancies* to retain the security deposit and as such, the landlord shall return the security deposit to the tenant in the amount of \$400.00.

17. I find that the tenant is entitled to a refund of the security deposit.

Decision

18. The tenant's claim for refund of security deposit succeeds in the amount of \$400.00.

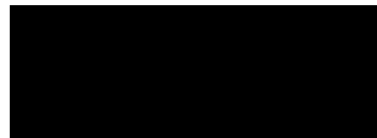
Summary of Decision

19. The landlord shall refund the security deposit of \$400.00 to the tenants.

20. The landlord shall retain rent in the amount of \$800.00 for the month of September.

January 3, 2024

Date



Pamela Pennell
Residential Tenancies Office