

Residential Tenancies Tribunal

Application 2023-1094-NL

Decision 23-1094-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 2:00 p.m. on 16-January-2024.
2. The applicants, [REDACTED] and [REDACTED] hereinafter referred to as "tenant1 and tenant2" attended by teleconference.
3. The respondent, [REDACTED] hereinafter referred to as "the landlord" did not attend.

Preliminary Matters

4. The landlord was not present or represented at the hearing and I was unable to reach her by telephone [REDACTED] at the start of the hearing. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, where the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as she has been properly served. The tenants submitted proof of service (TT#01) with their application stating that they had served the landlord with notice of the hearing, by email [REDACTED] on 22-December-2023; a screenshot of that email was submitted with their application. As the landlord was properly served, and as any further delay in these proceedings would unfairly disadvantage the tenant, I proceeded with the hearing in her absence.
5. This file is a counter claim to file 2023-0838-NL, the landlord discontinued this application.

Issues before the Tribunal

6. The tenants are seeking:
 - Refund of security deposit \$1,275.00
 - Validity of termination notice
 - Compensation for inconvenience \$1,637.71

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: Return of Security deposit \$1,275.00

Relevant Submissions

9. The tenants provided proof of the written rental agreement (TT#02) with their application. The rental agreement was for a term beginning 15-April-2023 and ending 15-May-2023. Tenant2 said that they paid \$1,700.00 for rent on the 15th day of each month. They also paid a security deposit of \$1,275.00 on 27-March-2023.
10. The tenants stated that the landlord gave them notice (TT#04) of termination of their rental agreement as of 31-October-2023; subsequently they served a notice of termination to the landlord (TT#03), and they moved out on 29-August-2023.
11. The tenants provided a copy of the receipt for the security deposit (TT#05). They confirm they have not received refund of this deposit since they moved. It is their understanding that the landlord is still in possession of the security deposit.

Analysis

12. As per Section 14 of the *Residential Tenancies Act, 2018*:

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.***

(13) Where a landlord does not make an application under paragraph (10)(b) or return the security deposit in accordance with subsection (12), the director may, without conducting a hearing, make an order requiring the landlord to return the security deposit to the tenant.

(14) Where a landlord does not make an application under subsection (11), he or she is not prohibited from making an application under section 42 other than an application with respect to a claim against the security deposit.

(15) For the purpose of subsections (8) to (14), "security deposit" includes the interest credited under subsection (7).

13. Section 14 states that once a tenant makes an application for the return of the security deposit, the landlord has 10 days to file a claim, from the date they are notified of the application. The landlord had filed a claim prior to the tenants' claim; however she discontinued her application (Paragraph 5).
14. The security deposit is the property of the tenant and held in trust by the landlord. The landlord should have returned this deposit not later than 10 days after the tenants vacated the property.
15. I find the landlord shall therefore return the security deposit totaling \$1,275.00 to the tenants.

Decision

16. The tenant's claim for return of the security deposit succeeds in the amount of \$1,275.00.

Issue 2: Validity of termination notice

Relevant Submissions

17. Tenant1 said that when they filed for their application with our office it came to light that the rental agreement has an end date of 15-May-**2023** not 2024. Tenant2 said that they were under the belief that the agreement was to be for a year and that when they signed the agreement that was their understanding. They believe this was written incorrectly in error.
18. Tenant2 said that the landlord gave them notice of termination of their rental agreement (TT#04, pages 68 - 70). Tenant1 declared that they were not given a proper notice, he said that they were only sent a text message on 04-August-2023 telling them that the rental agreement will end at the end of the fixed term of 31-October-2023.
19. Tenant1 explained that the notice is from the homeowner to the landlord stating that they will not renew the lease between the homeowner and the landlord. In the messages the landlord then goes on to say that she is advocating to extend the notice and that the homeowner will permit them to stay until 30-April-2024. The she follows up an hour later and complains about tenant1 and states that they will be issuing a 3-month notice. Tenant2 said prior to this they did not realize that the landlord was renting the house and subletting to them.

20. Tenant2 confirmed that the only written notice received was the text message.
21. Tenant1 explained that when they questioned the notice things deteriorated and the landlord told them that she if they weren't going to leave that she would make things difficult and do random inspections all the time.
22. Subsequently, tenant1 stated that the landlord intended to make life unbearable, so they decided to terminate the agreement themselves. They provide a Section 23 termination notice (TT#03) on 15-August-2023 ending on 29-August-2023. Tenant1 confirmed that they did not provide proof of this harassment. Tenant2 said that they did move on 29-August-2023.

Analysis

23. The issue to be determined is whether the notice provided to the tenants by their landlord is valid. Any notice given must adhere to the *Residential Tenancies Act, 2018*. Section 34 of the *Act* states that a notice must contain the section of the *Act*, the names of the tenants and their address, 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.*

As the notice does not contain the Section of the *Act*, names, or address, it is not valid.

24. Additionally, if we are to assume that this is a Section 18 notice, the following requirements apply:

Notice of termination of rental agreement

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

- (a) not less than 4 weeks before the end of a rental period where the residential premises is rented from week to week;*
- (b) not less than 3 months before the end of a rental period where the residential premises is rented from month to month; and*
- (c) not less than 3 months before the end of the term where the residential premises is rented for a fixed term.*

25. The tenants believed that the date of 15-May-2023 was in error and that they had a one-year term. If this is correct, then the landlord cannot issue a notice before the end of that term which would be 15-May-2024. As per Section 18. (2) (c).

26. If the date was not in error, and the tenants had a monthly agreement, this notice still does not meet the requirements as per Section 18. (2) (b). of the Act. The end of their monthly term is the 14th day of each month as they stated in paragraph 9 that rent was due on the 15th day of the month for the monthly rent. Therefore, a notice given on 04-August-2023 would have an end date of 14-November-2023.
27. As the notice does not meet the requirement of the *Residential Tenancies Act, 2018*, I find that it is not a valid notice.

Decision

28. The notice with a termination date of 31-October-2023 is not valid.

Issue 3: Compensation for inconvenience \$1,637.71

Relevant Submissions

29. Tenant2 explained that they had believed they were in a long-term rental. She said that they would never have moved themselves, 3 dogs and two children if they had realized that the landlord was not planning on continuing the agreement.
30. Tenant1 believes that the landlord used their financial information to purchase the house and that she is living there now.
31. Tenant2 said that they incurred a lot of expense and are seeking compensation. They submitted a compensation list (TT#06) as follows:

Item	Compensation
Paint purchased for basement	110.35
U-haul receipt move in	365.70
U-haul receipt move out	353.70
Storage locker August	204.24
Storage locker September	201.24
Storage locker October	201.24
Storage locker November	201.24
Total	\$1,637.71

32. Tenant2 said that when they moved in the upstairs had been painted and the downstairs had not been completed. She said that she spoke with the landlord, attained permission to paint. The landlord agreed that they could paint and she would deduct the cost of the supplies from their rent (TT#04 p.34). Tenant2 did not submit receipts for the cost of the paint. She confirms that they didn't paint and still have the paint.
33. Tenant2 said that they are also seeking the cost of the U-Haul to move in and out. They provided receipts (TT#07 & TT#08). \$365.70 to move to the property and \$353.70 to move out. Tenant2 explained that it cost them a lot to move both ways. They said that financially this move was expensive and that they understood that they were going to be long term renters.

34. Tenant2 said that they are also seeking compensation for the storage units where their furniture is being stored. The provided receipts for August – November (TT#09 – 13), for a total of \$807.96. She said that they have been unable to find housing and that all their belongings are now in storage.
35. Tenant 2 said that this woman has caused their family a lot of stress. She has had to move [REDACTED] her partner (tenant1) is [REDACTED] They have 3 pets and tenant1 has [REDACTED] everyone's life is in upheaval. Tenant2 said that she works from home, and she is constantly checking online 8 hours a day trying to find housing in [REDACTED] She confirms that they are still without housing. Tenant1 said that they took every cent they had to pay moving costs and a security deposit. They've lost everything but their jobs. He said that there was never any intent by the landlord to continue this agreement. They feel misled and are seeking the cost of their losses.

Analysis

36. In consideration of the cost of the paint, although the evidence supports that the landlord intended to reimburse the cost of the supplies from their rent, the tenants did not complete the work because they moved before they had time to paint, and they still have possession of those supplies. In any compensation claim it is incumbent on the applicant to show the value of the loss incurred; the tenants did not provide proof of their purchases and the house was not painted and therefore the landlord did not benefit. I therefore find that the tenants' claim for paint fails.
37. The remaining costs for moving expenses and storage of their belongings are sought as the tenants believed that the notice given by the landlord was invalid. They have proven, paragraph 28, that the notice was invalid. However, the tenants did not move on 31-October-2023 from the unit under the invalid notice. Instead, they gave their own notice and moved on 29-August-2023 (paragraph 10). As they determined their own move, the landlord is not responsible for this loss. I find that their claim for compensation for inconvenience fails.

Decision

38. The claim for compensation for inconvenience fails.

Summary of Decision

39. The landlord shall reimburse the tenants security deposit of \$1,275.00.
40. The notice with a termination date of 31-October-2023 is invalid.

January 26, 2024

Date

[REDACTED]
Jacqueline Williams, Adjudicator
Residential Tenancies Office