

Residential Tenancies Tribunal

Application 2023-1148-NL

Decision 2023-1148-NL

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 9:02 AM on 13 February 2024 via teleconference.
2. The applicants, [REDACTED], hereinafter referred to as "tenant1", and [REDACTED], hereinafter referred to as "tenant2", attended the hearing and offered testimony.
3. The respondent, [REDACTED], hereinafter referred to as "the landlord", attended the hearing and offered testimony. [REDACTED], hereinafter referred to as "landlord2", did not attend the hearing.

Preliminary Matters

4. The landlord was served the Application for Dispute Resolution and notice of hearing via electronic mail on 1 February 2024 at e-mail address [REDACTED] (Exhibit T # 1). Of note, while this piece of evidence indicates tenant2 had served the documents, it was signed by tenant1 on behalf of tenant2. The landlord did not dispute that he was receiving the notice and wished to proceed with the hearing.
5. The details of the claim were presented as a written monthly rental agreement with rent set at \$750.00, due on the 1st of each month. There was a security deposit collected on this tenancy in the amount of \$450.00 prior to occupancy in April 2022 which remains in the possession of the landlord. The tenants initially moved into the rental unit located at [REDACTED] in April 2022. Approximately two weeks after moving in to [REDACTED], both tenants, with landlord approval, moved into [REDACTED] and vacated the rental on 2 November 2023.
6. The tenants amended their application at the hearing to include hearing fees.

Issues before the Tribunal

7. The tenants are seeking the following:

- Return of the security deposit in the amount of \$450.00 plus interest;
- Compensation for inconvenience in the amount of \$425.00; and
- Hearing fees in the amount of \$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. Also relevant and considered in this case is S. 14, 34, and 35 of the *Residential Tenancies Act*, 2018.

Issue 1- Return of Security Deposit- \$450.00

Tenants Position

9. Along with their application, the tenants provided a copy of the written monthly rental agreement (Exhibit T # 2). They are seeking a return of the Security Deposit of \$450.00. Tenant2 testified the security deposit was paid in full prior to their occupancy of [REDACTED], in April 2022.

10. Tenant1 testified two weeks after they had moved into [REDACTED] [REDACTED] became vacant and with the permission of the landlords, they relocated from the [REDACTED] to the [REDACTED]. He described both properties as being, "two-bedroom trailers".

11. Tenant2 stated in August 2023, they had been made aware that the landlords intended on selling the rental property and they were issued a three month notice to be out of the rental by October 31, 2023. Tenant1 testified there were two real estate agents who visited [REDACTED] after they had been issued the three-month notice. The tenants vacated the rental by 2 November 2023.

12. Tenant1 testified a property manager for the landlords, [REDACTED], had completed a walk-through of [REDACTED], prior to their vacating the rental and informed both tenants they would be issued their securing deposit in full. Along with their application, the tenants provided a piece of evidence signed by the property manager (Exhibit T # 3).

Landlord Position

13. Landlord1 testified he did remain in the possession of the security deposit paid by the tenants as of the date of the hearing (13 February 2024). He did not dispute the tenants had been issued a three-month termination notice on 1 August 2023 with a request for the tenants to vacate by 31 October 2023. He did not dispute the tenants were no longer tenants of [REDACTED] on the date of the hearing.

14. Landlord1 stated both landlords intended to sell the rental property and during the notice period, two separate real estate agents attended [REDACTED], who "would not take pictures of the unit because it was unfit due to being unclean". The landlord testified he was seeking to hold the security deposit due to having to clean the rental. He did not offer any evidence during the hearing in relation to this claim.

15. During the hearing, landlord1 testified he had filed an application for a request to hold the security deposit and had filed this application on 12 February 2024 with the *Residential Tenancies Program*.

Analysis

16. Section 14 of the *Residential Tenancies Act, 2018* is applicable to this hearing and application. As stated within 14 (10), "*Where a landlord believed 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*".
17. As noted, in Section 14(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)*". Should a landlord fail to make an application in accordance with this section, the landlord "*shall return the security deposit to the tenant*" as per section 14(12).
18. Upon review of the tenants Application for Dispute Resolution (Exhibit T # 4), this piece of evidence is signed on 17 November 2023. Furthermore, the affidavit of service reveals the landlord was served on 1 February 2024. During the hearing, landlord1 did not dispute this.
19. The landlords did not file Application for Dispute Resolution to determine the disposition of the security deposit within the required 10-day timeline after receiving the tenant's application.

Decision

20. The landlords shall return the security deposit of \$450.00 plus interest at the rate prescribed by the Security Deposit Interest Regulations to the tenant, as follows:

Security Deposit	\$450.00
2024 Interest – 1% [$\$450 * 1\% * (45/366 \text{ days})$]	<u>\$ 0.55</u>
	\$ 450.55

Issue 2 – Compensation for Inconvenience = \$425.00

Tenants Position

21. Tenant1 stated he and tenant2 cleaned both [REDACTED] and [REDACTED] after taking occupancy of the rentals, and prior to their occupancy of [REDACTED]. [REDACTED], they had not completed a "walk through" with the landlords of the rental property. Along with their application, they had provided a list of cleaning required for the rental broken down in 7 items and amounts to clean those items, in total equaling \$425.00 (Exhibit T # 5).

22. This piece of evident includes the following information:

- Basic Cleaning at \$45.00 for 5 hours.....\$225.00
- Inside fridge.....\$30.00
- Kitchen cabinets.....\$30.00
- Inside oven.....\$30.00
- Window sills and windows.....\$60.00
- Ceiling Fans.....\$30.00
- Cleaning supplies.....\$20.00
- Total.....\$425.00

23. Tenant 2 testified the hourly rate for cleaning was based on “average rates for cleaners”, and that they they both took occupancy of [REDACTED] a day after the prior tenants had vacated.

Landlord Position

24. Landlord1 disputed the tenants request for compensation for cleaning.

Analysis

25. Applicants claiming compensation for inconvenience must provide evidence demonstrating that the inconvenience was a direct result of a violation of the *Act* or the rental agreement. In this matter, the tenants both testified cleaning was required after they took occupancy of the rental. The breakdown of those cleaning costs were identified as “average”. There was no pictorial evidence offered by the applicants in this matter. Furthermore, they both entered into a verbal rental agreement to take occupancy of the rental with the landlord without a “walkthrough” occurring. It was their decision to enter into this agreement.

Decision

26. The tenants claim for compensation fails.

Issue 3- Hearing Expense = \$20.00

27. The tenants provided a receipt for the hearing expense (Exhibit T # 6).

Decision

28. As the tenant’s claims are partially successful, the landlords shall pay the tenants **\$20.00** for the hearing expense.

Summary of Decision

29. The landlords shall return **\$470.55** to the tenants, broken down as follows:

- Return of Security Deposit.....\$450.00
- 2024 Interest Rate- 1%.....\$0.55
- Hearing Expense.....\$20.00
- Total.....**\$470.55**

16 May 2024

Date

