

Residential Tenancies Tribunal

Application 2023-1160-NL &
2024-0025-NL

Decision 2023-1160-NL &
2024-0025-NL

Michael Reddy
Adjudicator

Introduction

1. The hearing was call at 9:01 AM on 8 February 2024 via teleconference. The hearing was to adjudicate two separate applications: 2023-1160-NL and 2024-0025-NL.
2. [REDACTED], hereinafter referred to as “tenant1”, attended the hearing. [REDACTED], hereinafter referred to as “tenant2”, did not attend the hearing.
3. [REDACTED], hereinafter referred to as “the landlord, attended the hearing.

Preliminary Matters

4. The tenant submitted an affidavit of service stating that the landlord was originally served a Notice of Hearing on 31 December 2023 (Exhibit T # 2), electronically to [REDACTED]. The landlord confirmed receipt of notification as stated. A Notice of Rescheduled Hearing was sent by the residential tenancies’ office on 18 January 2024 (Exhibit T # 3), and the parties confirmed receipt of notification.
5. Neither the tenants or the landlord sought to amend their respective applications.

Issues before the Tribunal

6. The tenants are seeking the following:
 - Return of security deposit in the amount of \$975.00
7. The landlord is seeking the following:
 - Rental arrears in the amount of \$1,300.00/Security deposit to be used against rental arrears owing

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of “*the Act*”.
9. Also relevant and considered in this case are sections 14, 18, 34 and 35 of the *Residential Tenancies Act, 2018*.

Issue 1: Return of Security Deposit- \$975.00/ Security Deposit used against Rental Arrears

Tenant Position

10. The tenants submitted, along with their application, a fixed term lease agreement for the rental at [REDACTED] which began on 1 May 2022 (Exhibit T # 1). As of 1 May 2023, this reverted to a month-to-month rental agreement. Rent was established at \$1,300.00 per month, and a security deposit of \$975.00 was paid to the then landlord, [REDACTED], on 1 April 2022. Along with their application, the tenants included a copy of the payment receipt for the security deposit (Exhibit T # 4).
11. Tenant1 testified while they were tenants at the rental, there were on-going concerns with the dampness and humidity of the rental unit, and mold issues throughout the property and stated they had advised the previous owner(s) of the concerns and there had been discussions with the previous landlord and handyman regarding repairs.
12. Tenant1 stated the new owner / landlord issued a three-month standard termination notice on 1 September 2023 with a move out date of 30 November 2023. He stated that following this notification the tenants began searching for a new residence, and by happenstance a residence became available in October 2023. He testified that they had to move into the new residence by 1 November 2023 or they would lose the opportunity. He noted that this did not give him the time to issue a one-month notice to the landlord. The tenant stated that he emailed the landlord on 18 October 2023 to provide notice that they would be vacating the property by 31 October 2023. He stated they had secured another living arrangement and were seeking return of the security deposit.

Landlord Position

13. The landlord testified that she took ownership of the property at [REDACTED] on 1 September 2023, and as the tenants were already in residence, assumed the month-to-month rental agreement that was in place. She confirmed that she was in possession of the \$975.00 damage deposit that had been collected by the previous owner/landlord.
14. In regard to the issues of mold, dampness and humidity raised by the tenants, the landlord stated that she had not received any requests for repairs or complaints from the tenants following taking ownership of the property.
15. The landlord testified during the hearing that she issued the tenants a standard three-month termination notice on 1 September 2023 with a request for them to vacate the rental by 30 November 2023 (Exhibit L # 3).

16. The landlord confirmed that the tenants emailed her on 18 October 2023 to inform her that they would be vacating the rental by 31 October 2023. She noted that this notice was less than the required 30-days as per the Residential Tenancies Act and is therefore seeking rent for November 2023. She also noted that while the tenants gave notice for 31 October 2023, they remained in the rental until close to midnight on 1 November 2023.
17. The landlord testified she was seeking rental arrears in the amount of \$1,300.00 for November 2023, and is requesting that the \$975 security deposit be used against the rental arrears owing.

Analysis

18. Upon review of the tenants' Application for Dispute Resolution and supporting documentation, I observe a written rental agreement (Exhibit T # 1) which evolved into a monthly rental agreement on 30 April 2023. The tenants did not provide a copy of their termination notice to the landlord but testified that they served notice by email on 18 October 2023 to vacate on 31 October 2023. The landlord confirmed receipt of this notice.
19. The *Residential Tenancies Act, 2018* offers clear timelines for month-to-month rental agreements. As stated in Section 18:

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...

(b) *not less than one month before the end of a rental period where the residential premises is rented from month to month.*

20. The notice to terminate provided by the tenant does not meet the required timelines of a month to month rental agreement as defined under section 18 of the *Act*.
21. I find that the tenant did not give proper notice to vacate the premises on 18 October 2024, and as a result, is responsible for rent for the month of November 2023 in the amount of \$1,300.00.
22. 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). 16. The landlord's claim for losses has been successful as per paragraph 14, and as such the security deposit shall be applied against monies owed.

23. The landlord's claim for rental income loss has been successful as per paragraph 19, and as such the security deposit shall be applied against monies owed.

Decision

24. The security deposit of \$975.00 shall be applied against monies owed.

Summary of Decision

25. The tenants shall pay to the landlord \$345.00 broken down as follows:

- Rental Arrears.....\$1,300.00
- **Security Deposit**.....-\$975.00
- Total..... **\$325.00**

29 May 2024

Date

