

Residential Tenancies Tribunal

Application 2024-0135-NL
Application 2024-0166-NL

Decision 24-0135-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:02 a.m. on 17-April-2024.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.
3. The respondent and counter applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.

Preliminary Matters

4. The tenant submitted an affidavit with her application stating that she had served the respondent with the notice of hearing electronically by email and text on 23-February-2024 (TT#1). The landlord confirmed receipt of the document on that date. The landlord countered the claim and submitted an affidavit stating that he served the tenant with the notice of hearing electronically by email on 7-March-2024 (LL#1). The tenant confirmed receipt of 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 that commenced on 1-October-2023; however, the tenant actually took possession of the unit in October 2022. The tenant vacated the premises on 31-January-2024. Rent was \$1800.00 per month, due on the first of each month. A security deposit of \$725.00 was paid in October 2022 and was transferred to the new homeowner on 30-September-2023. The security deposit is in the current landlord's possession.

Issues before the Tribunal

6. The tenant is seeking:
 - Refund of security deposit \$725.00
 - Refund of rent \$750.00
7. The landlord is seeking:
 - Rent paid \$1800.00
 - Compensation for damages \$800.00
 - Compensation for inconvenience \$250.00
 - Hearing expenses \$20.00
 - Security deposit applied against monies owed \$725.00.

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*.
9. Also, relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 14; Security Deposit, Section 16; Rent Increase, Section 18; Notice of termination of a rental agreement and Section 19: Notice where failure to pay rent. Also, relevant and considered in this decision are the following sections of the *Residential Tenancies Policy Manual*, Section 9-3: Claims for damage to rental premises and Section 9-5: Life expectancy of property.

Item # 1: Refund of rent \$750.00

Relevant Submission

10. The tenant testified that she overpaid rent in the amount of \$250.00 per month for the period of November 2023 to January 2024. The tenant is seeking a refund of rent in the amount of \$750.00 and she submitted a copy of a rental ledger to support the claim (TT#2). See breakdown of rental ledger below:

Rent refunded:

November²⁰²³ - \$250.00 = the difference between the increased rent amount of \$1800.00 and the previous amount of \$1550.00

December²⁰²³ - \$250 - Same as above

January²⁰²³ - \$250.00 - Same as above

Total = \$750.00

Tenants' Position

11. The tenant testified that when the new homeowner took possession of the property on 29-September-2023, he approached her with his plans to increase rent as he felt that rent was below market value. The tenant stated that she was fearful of having to vacate the unit with her elderly father and try to find a new home during a housing crisis. The tenant stated that she agreed to the new rent increase as she felt she had no choice.

Landlord's Position

12. The landlord testified that the tenant agreed to the rent increase and signed a rental agreement to pay \$1800.00 per month effective November 1, 2023. The landlord stated that the tenant did not have a problem with the rent increase and agreed that the current amount was below market value.

Analysis

13. Subsection 16(3)(b) of the *Residential Tenancies Act, 2018* states:

Rent increase

16(3). Where a landlord increases the amount of rent payable by a tenant, the increase shall be effective on the first day of a rental period, and the landlord shall give the tenant written notice of the increase

(b) not less than 6 months before the effective date of the increase where the residential premises is rented from month to month or for a fixed term.

14. I accept that the tenant signed a new rental agreement with an increase of \$250.00 per month in rent when the new homeowner took possession of the property, however the landlord contravened Section 16 of the *Act* as stated above. The new landlord was required to provide a 6 month notice of a rental increase and for that reason, I find that the tenant is entitled to a refund of rent in the amount of \$750.00 for the period of November 2023 to January 2024.

Decision

15. The tenant's claim for a refund of rent succeeds in the amount of \$750.00

Issue # 2: Rent paid \$1800.00

Relevant Submission

16. The landlord testified that rent is outstanding in the amount of \$1800.00 for the month of February 2024 after the tenant vacated the unit. The landlord is seeking rent to be paid in full. The landlord submitted a copy of a rental ledger to support the claim (LL#2). See breakdown rental ledger below:

rent ledger:

AMOUNT	DATE
\$1,550	2023/10/05
\$1,800	2023/11/02
\$1,800	2023/11/30
\$1,800	2023/12/28

Landlord's Position

17. The landlord testified that the tenant vacated the unit on the 31-January-2024 without proper notice. The landlord stated that the tenant gave notice on 4-January-2024 which was less than a month as required by the *Act*.

Tenant's Position

18. The tenant disputed that she owes rent for the month of February 2024 as she was not residing at the premises at that time. The tenant did not dispute that she gave a termination notice on 4-January-2024 to vacate at the end of the month.

Analysis

19. Section 18 of the *Residential Tenancies Act, 2018*, which states:

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; and ...

20. The tenant did not provide the landlord with the proper notice as per Section 18 stated above and for that reason, I find that the landlord is entitled to rent paid for the month of February 2024 in the amount of \$1550.00. The full amount of \$1800.00 will not be awarded as per analysis in paragraphs 13 and 14 above.

Decision

21. The landlord's claim for rent to be paid succeeds in the amount of \$1550.00.

Issue # 3: Compensation for Damages \$800.00

Relevant Submission

22. The landlord testified that the unit needed to be painted with some plaster work and he submitted a quote from a person he found online. The landlord stated that he sent pictures of the unit to the painter and received a quote of \$800.00 to complete the work. The landlord submitted a copy of the quote to support the claim (LL#3).

Landlord's Position

23. The landlord testified that the unit needed some plaster work and needed to be fully painted. The landlord stated that the tenant left a TV mount on the wall which will have to be removed and holes repaired. The landlord stated that there were morros stuck to the wall which also caused damage and scratches that needed repair. The landlord submitted a copy of photographs and videos to support the claim (LL#4). The landlord is seeking \$800.00 to have the work completed.

Tenant's Position

24. The tenant disputes that she caused any damage to the walls and stated that the tv mount was on the wall when she moved into the unit, and she testified that the paint was not

fresh paint and had most likely been on the walls for a couple of years prior to her tenancy.

Analysis

25. In accordance with *Residential Tenancies policy 9-3*, the applicant is required to show:

- *That the damage exists;*
- *That the respondents are responsible for the damage, through a willful or negligent act;*
- *The value to repair or replace the damaged item(s)*

26. The landlord was able to show that the damages exist, he provided photographs and videos that showed the condition of the walls with small holes and scratches and the presence of a tv mount that will leave holes in the wall once removed. The landlord however was unable to show that the tenant was responsible for the damages to the walls. The tenant disputed that she caused any damages to the wall and testified that the tv mount was there when she moved in. The landlord took possession of the property a year after the tenant moved in and he did not have photographs to show the condition of the unit when he purchased the property. I asked the landlord if he knew when the last time was that the house was painted, and he responded that he did not know. I asked the tenant if the house was freshly painted when she moved in and she responded that the paint was not fresh paint and most likely was a couple of years old.

27. In accordance with *Residential Tenancies Policy 9-3*, the adjudicator must consider depreciation when determining the value of damaged property. Accordingly, the average expected life span of interior paint is 3-5 years. Based on testimony, I find that the paint is at least 4 years old and as such, has reached the end of its life cycle. With that said, there should not have been any damage to the walls that needed repair. The photographs show some minor damage to the walls that I accept will require some level of plastering, however the landlord was unable to show that the tenant caused the damage to the walls as he did not provide any photographs of the unit prior to the tenancy in 2022. The tenant testified that she did not cause any damage to the walls, and she testified that the tv mount was on the wall when she took possession in 2022. For those reasons, I find that the walls need to be repaired and painted as a result of *normal wear and tear* and I find that the tenant is not responsible for the cost to paint and plaster the unit.

Decision

28. The landlord's claim for damages does not succeed.

Issue # 3: Compensation for Inconvenience \$250.00

Relevant Submission

29. The landlord testified that he was inconvenienced with having to clean the unit, remove food from the refrigerator and dispose of bags of recyclables left at the unit. The landlord is seeking \$250.00 to complete the work. The landlord submitted a copy of a quote from a cleaning person to support the claim (LL#5).

Landlord's Position

30. The landlord testified that the unit was left dirty and needed to be cleaned and he submitted photographs and videos to support the claim (LL#6). The landlord stated that the refrigerator was full of food which needed to be disposed of and there were 3 bags of recyclables that needed to be removed from the premises.

Tenant's Position

31. The tenant disputes that she left the unit dirty and submitted photographs of the unit on the day she vacated to support the claim (TT#3). The tenant did not dispute that she left food in the refrigerator accidentally and forgot to clean the deep freeze in the basement. The tenant did not dispute that she left the recyclables.

Analysis

32. Based on the photographs and videos entered into evidence, I accept that the unit was not totally clean. The deep freeze was extremely dirty, and the stove was also dirty. The window ledges, heaters, light fixtures, doors and cabinets needed to be cleaned. I accept that the tenant provided photographs that made the unit look clean however the photographs did not show the areas that needed cleaning. The landlord provided a quote of \$250.00 to have the cleaning completed. I find the landlord was able to show that the damage exists and the cost to clean the house. For those reasons, I find that the tenant is responsible for the cost to clean the unit and dispose of the food and recyclables.

Decision

33. The landlord's claim for compensation for inconveniences succeeds in the amount of \$250.00.

Issue # 4: Hearing expenses \$20.00

34. Both the landlord and the tenant paid an application fee of \$20.00 to *Residential Tenancies*. The landlord stated that he wished to claim his hearing expenses however the tenant did not wish to claim her hearing expenses.
35. In accordance with Section 12-1 of the *Residential Tenancies Policy Manuel*, if both landlord and tenant are awarded anything, the amount of filing fees will be set off.

Decision

36. The landlord's claim for hearing expenses does not succeed.

Issue # 5: Refund of security deposit \$725.00

Security deposit to be applied against monies owed \$725.00

Analysis

37. 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.

38. The landlord's claim for losses has been successful as per paragraphs 20, 32 and 35 and as such the security deposit shall be applied against monies owed. Pursuant to the *Residential Tenancies Act, 2018* the landlord must pay interest on a security deposit to a tenant for the entire period that the landlord has had the security deposit. The interest is calculated as simple interest and is not compounded. The annual interest for 2022 -2023 was 0% and is currently 1% for 2024.

39. The tenants claim for losses has been successful as per paragraph 15 and as such shall be applied against the amount awarded to the landlord.

Decision

40. The tenant's claim for a refund of the security deposit does not succeed.

41. The landlord's claim to have the security deposit applied against monies owed succeeds.

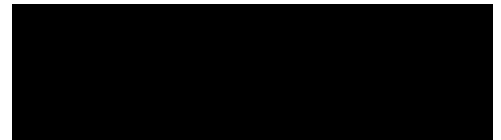
Summary of Decision

42. The tenant shall pay the landlord \$322.84 as follows:

Rent paid	\$1550.00
Compensation for damages	0.00
Compensation for inconveniences	250.00
Hearing expenses	0.00
Less security deposit & interest	727.16
Less tenants award for rent refunded	750.00
Total	<u>\$322.84</u>

April 23, 2024

Date



Pamela Pennell
Residential Tenancies Office