

Residential Tenancies Tribunal

Application 2024-0201-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 8-April-2024 at 9:04 am.
2. The applicant, [REDACTED], hereinafter referred to as the tenant, attended via teleconference.
3. The respondents, [REDACTED], hereinafter referred to as the landlords, also attended via teleconference alongside their son [REDACTED] who helped represent them at the hearing.
4. Also in attendance was [REDACTED] of [REDACTED]. I was advised that [REDACTED] currently holds the security deposit.

Preliminary Issues

5. The respondents advised they had attempted to file a counterclaim for rent owed and a bill for cleaning. No such application could be located. The applicant advised he was not aware of this counterclaim in advance of the hearing. I therefore determined we could not proceed with the counterclaim.

Issues before the Tribunal

6. Should the tenant's claim for a refund of rent succeed?
7. Should the tenant's application for the return of a security deposit succeed?

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* (the *Act*).

Issue 1: Refund of Rent

Tenant's Position

9. The tenant testified that he had viewed the rental premises about a month before he was set to move in. Subsequently to this he signed a rental agreement (T#11) with the landlords. This agreement was arranged through realty corporation as the landlords live in [REDACTED]. He made a payment for the first month's rent and the security deposit (T#10). When he arrived on 1-March-2024 he was dissatisfied with the state of the apartment. He testified that there was a lot of "mess" around the house. He submitted pictures (T#1-T#9) in support of this. A large number of personal effects are visible in these photos. He testified that his agreement with the landlords was that they would provide a fully furnished apartment but ensure all their personal effects to be limited to a single room. He was also dissatisfied as there was an apparent issue with the running water and he was not given a key. He says he attempted to contact the realty corporation and the representatives of the landlords to remedy the issues quickly but they were not dealt with to his satisfaction and he sought the return of his money, which was refused.

Landlord's Position

10. The landlords' representative agreed as to the general agreement with the tenant, including that one of the bedrooms would be unusable for some time as it would be used to store the landlords' personal effects. They testified that they relied primarily on their realty company to manage the property. They agreed that some of the items visible in T#1-T#9 (coats, shoes) ought to have been removed and stored elsewhere but argued it could have been remedied. They argued that other items, such as towels, were left for the tenants' use and convenience. They say they are entitled to the first months rent as they were entitled to 30 days' notice of termination.

Analysis

11. The representative of [REDACTED] testified that the landlords had intended to visit the property to prepare it for the tenant but were unable to do so due to inclement weather. [REDACTED] became inaccessible, making it impossible for agents for both parties to reach the property in advance of the tenancy as had been originally planned. She testified that the landlords intended to prepare the premises "the way it should have been" but were unable to. She says she advised the tenant's agent that they arranged for people in the community to attempt to attend to the property in their absence, but that these people were not professionals.
12. There was conflicting evidence regarding whether or not the water was running. The tenant testified that it was not, and the landlords testified that it was, citing the word of an acquaintance who had attended on their behalf.
13. There was also conflicting evidence regarding representations made about a large sewing machine which occupied much of one room. The landlords testified that the tenant had been advised by his agent prior to renting that this machine would not be

able to be removed for some time. The tenant testified that he had not been informed until afterwards, though he agreed he found out through his agent.

14. The landlords are correct that under the *Act*, more specifically under s. 18(1)(b), they are entitled to one months' notice when the tenant terminates the rental agreement. Failure to give adequate notice can give rise to a right to charge rent for time periods where the tenant does not actually have possession of the property.
15. Based on the testimony heard at the hearing, the tenant might have successfully terminated the agreement early by issuing a termination notice under s. 20(1) or s. 21(1) of the *Act*. He did not do so. The tenants' communications with the landlord did not meet the requirements under s. 34 of the *Act*, reproduced here:

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.

16. Nevertheless, the testimony at the hearing presented by all sides leads me to conclude that while the landlords attempted to abide by the terms of the rental agreement, they failed to do so. The tenant was deprived of some of the benefit of the rental agreement through no fault of his own even before he attempted to terminate the agreement. Some compensation is reasonable.
17. Considering the evidence in its totality, I value the deprivation suffered by the tenant at $\frac{1}{4}$ of the \$900 monthly rent, resulting in a total of \$225.

Issue 2: Security Deposit

18. The tenant made an application for the return of the security deposit under s. 14(10)(b) of the *Act*. Ss. 14(11) and 14(12) of the *Act* read as follows:
 - (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.
19. In this case, no application under s 14(11) was received within the 10-day notice period, nor was notice of same provided to the tenant.

20. In accordance with s. 14(12), the security deposit must therefore be returned to the tenant.
21. S. 14(7) requires that the security deposit be refunded with interest in the amount prescribed by the regulations. The regulations prescribe a cumulative simple interest rate of 1%. The security deposit was paid on 8-February-2024. This results in an interest total of \$1.13.

Decision

22. The landlord shall refund \$225 of rent to the tenant.
23. The landlord shall return the \$675 security deposit to the tenant along with the \$1.13 interest.
24. As the tenant's claim was successful, he is entitled to claim for his hearing expenses. In this case, his expenses consisted solely of the \$20 hearing application fee.

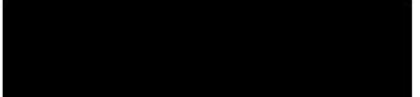
Summary of Decision

25. The landlord shall pay to the tenant \$921.13 as follows:

Rent Refund.....	\$225.00
Security Deposit.....	\$676.13
Hearing Expenses.....	\$20.00
Total.....	\$921.13

4-July-2024

Date


Seren Cahill
Residential Tenancies Office