

Residential Tenancies Tribunal

Application 2024-0203-NL
Application 2024-0249-NL

Decision 24-0203-00

Oksana Tkachuk
Adjudicator

Introduction

1. Hearing was called at 1:45 p.m. on 30-May-2024.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.
3. The respondent and a 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 landlord with the notice of hearing electronically by email to [REDACTED] on 20-March-2024 (TT#1). The tenant also submitted proof of email address and proof of the sent email (TT#2). In accordance with the *Residential Tenancies Act, 2018* this is good service.
5. The landlord submitted an affidavit with her counter application stating that she served the tenant with the notice of hearing electronically by email to [REDACTED] on 8-April-2024 (LL#1). The tenant agreed that she received the notice on that date. In accordance with the *Residential Tenancies Act, 2018* this is good service.
6. There was a written month-to-month rental agreement which commenced on 1-October-2023. The tenant vacated the unit on the 29-February-2024. Rent was \$908.00 per month, due on the first day of each month. A security deposit of \$450.00 was paid on 16-September-2024 (TT#3) and is in the landlord’s possession.

Issues before the Tribunal

7. The tenant is seeking:
 - Refund of security deposit \$450.00

8. The landlord is seeking:
 - Validity of termination notice
 - Rent to be paid \$908.00
 - Security deposit applied against monies owed \$450.00
9. The landlord amended her application to include hearing expenses in the amount of \$20.00.

Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
11. Also, relevant and considered in this decision is the following sections of the *Residential Tenancies Act, 2018*: Section 23: Notice where landlord contravenes peaceful enjoyment and reasonable privacy and Section 14: Security deposit.

Issue # 1: Validity of termination notice

Relevant Submission

12. The landlord submitted a copy of a termination notice issued by the tenant on 28-February-2024 under Section 23: Notice of termination of rental agreement where landlord contravenes peaceful enjoyment and reasonable privacy. The tenant intended to vacate the residential premises on 29-February-2024 (LL#2).

Landlord's position:

13. The landlord stated that the tenant was renting a basement apartment and other tenants - the family with three kids resides on the main floor of the house. The landlord confirmed that the tenant was aware of this information before she signed the rental agreement. The landlord stated that the regular noise from the family with three children living upstairs is typical. She also mentioned that during her visits to the family, she never heard any excessive noise. The landlord submitted a statement from the tenants who live upstairs to support her claim (LL#3). The landlord does not agree that the tenant's notice to vacate the unit was justified by interference with peaceful enjoyment and reasonable privacy.

Tenant's position:

14. The tenant claimed that there were excessive noises coming from the tenants, who live upstairs. She submitted evidence, including audio files (TT#4, TT#5, TT#6) and list of witnesses (TT#7). She stated that due to the persistent noise, she needed to vacate the unit and had given proper notice to the landlord by message on 26-February-2024 and another notice on 28-February-2024 to vacate the rental unit on 29-February-2024.

Analysis

15. The notice was served under Section 23 of the *Residential Tenancies Act, 2018* which states:

Notice where landlord contravenes peaceful enjoyment and reasonable privacy

(1) Notwithstanding subsection 18(1) and paragraph 18(3)(a), where a landlord contravenes statutory condition 7(b) set out in subsection 10(1), the tenant may give the landlord notice that

the rental agreement is terminated and the tenant intends to vacate the residential premises on a specified date not less than 5 days, but not more than 14 days, after the notice has been served.

(2) In addition to the requirements under section 34, a notice under this section shall

(a) be signed by the tenant;

(b) state the date on which the rental agreement terminates and the tenant intends to vacate the residential premises; and

(c) be served in accordance with section 35.

16. I accept all the testimony and evidence presented by the landlord and the tenant.

However, regarding the time frame, I determine that the notice does not comply with the requirements under section 23 of *The Act*. I find that the termination notice given is not a valid notice.

Decision

17. The termination notice is not a valid notice.

Issue # 2: Rent Paid \$908.00

Relevant Submission

18. The landlord testified that rent is outstanding in the amount of \$908.00 for the month of March 2024 and she submitted a rental ledger to support the claim (LL#3). See the copy of rental ledger below:

Rent Ledger

Landlord Name: [REDACTED] Start Date of Tenancy: Oct. 1, 2023
Tenant Name: [REDACTED] Security Deposit Paid: \$ 450
Rental Unit Address: [REDACTED] Date Security Deposit Paid: Sept 16, 2023

Date	Transaction Description	Amount Due	Amount Paid	Balance
16-Sept-23	Damage Deposit	\$ 450	\$ 450	\$ 0
1-Oct-23	Oct Rent	\$ 900	\$ 900	\$ 0
1-Nov-23	November Rent	\$ 908	\$ 908	\$ 0
1-Dec-23	Dec Rent	\$ 908	\$ 908	\$ 0
1-Jan-24	Jan Rent	\$ 908	\$ 908	\$ 0
1-Feb-24	Feb. Rent	\$ 908	\$ 908	\$ 0
1-Mar-24	Mar Rent	\$ 908	\$ 0	\$ 908

Landlord's Position

19. The landlord declared that the tenant is responsible for the rent of March. The landlord testified that after giving the termination notice, which was not valid, the tenant should pay rent of March in the amount of \$908.00.

Tenant's Position

20. The tenant disputed that she owes any money for the rent of March. The tenant testified that she vacated the unit in the end of February due to the interference of peaceful enjoyment and that she gave the landlord a proper notice.

Analysis

21. Rent is required to be paid under a rental agreement by a tenant during the use or occupancy of a residential premises. The tenant vacated the rental premises on 29-February-2024, however, as stated above in the paragraph 17, the termination notice that the tenant issued to the landlord is not a valid notice. For those reason, I find that the tenant is responsible for the outstanding rent for the month March in the amount of \$908.00.

Decision

22. The landlord's claim for rent succeeds in the amount of \$908.00.

Issue # 3: Hearing expenses \$20.00

23. The landlord paid an application fee of \$20.00 to *Residential Tenancies* and submitted a copy of the receipt (LL#3).

24. As the landlord's claim has been successful, the tenant shall pay the \$20.00.

Decision

25. The landlord's claim for hearing expenses succeeds in the amount of \$20.00.

Issue # 4: Refund of security deposit. Security deposit applied against monies owed \$450.00

Analysis

26. 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).*

27. The tenant's termination notice was improper as per paragraph 17, therefore I find that her claim for the refund of security deposit fails.

28. The landlord's claim has been successful as per paragraphs 22 and 25 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 2023 was 0% and is currently 1% for 2024.

Decision

29. The tenant's claim for the refund of security deposit fails.

30. The landlord's claim for security deposit to be applied against monies owed succeeds.

Summary of Decision

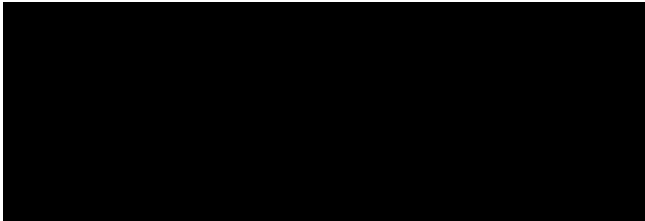
31. The tenants claim for the refund of security deposit fails.

32. The termination notice is not a valid notice.

33. The tenant shall pay the landlord \$470.13 as follows:

Rent paid	\$908.00
Hearing expenses	20.00
Less security deposit & interest.....	451.87
Total	\$470.13

June 6, 2024
Date



Oksana Tkachuk, Adjudicator
Residential Tenancies Office