

Residential Tenancies Tribunal

Application 2024-0297-NL

Decision 24-0297-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:59 p.m. on 21-May-2024.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the landlord” did not attend.

Preliminary Matters

4. The landlord was not present or represented at the hearing and I was unable to reach him by telephone at the start of the hearing. This Tribunal’s policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of hearing 10 clear days prior to the hearing date and, where the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent’s absence so long as he has been properly served. The tenant submitted an affidavit with his application stating that he had served the tenant with the notice of hearing electronically by email to: [REDACTED] on 18-April-2024 (TT#1). The tenant showed proof of email address as per rental agreement (TT#2). In accordance with the *Residential Tenancies Act, 2018* this is good service. As the landlord was properly served, and as any further delay in these proceedings would unfairly disadvantage the tenant, I proceeded with the hearing in his absence.
5. There was a written term rental agreement which commenced on 4-July-2023. The tenant vacated the unit on 15-March-2024. Rent was \$1000.00 per month, due on the 1st of each month. A security deposit of \$500.00 was paid on 1-April-2023 and the last month’s rent was paid in the amount of \$1000.00.

Issues before the Tribunal

6. The tenant is seeking:
 - a. Validity of termination notice determined

- b. Rent refunded \$1000.00
- c. Utilities paid \$35.00
- d. Security deposit refunded \$500.00
- e. Hearing expenses \$20.00

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
8. Also, relevant and considered in this decision is the following section of the *Residential Tenancies Act, 2018*: Section 14: Security deposit and Section 34: Requirements of notices. Also, relevant and considered in this decision is the following section of the *Residential Tenancies Policy Manual*; 12-1: Costs.

Issue # 1: Validity of Termination Notice Determined

Relevant Submission

9. The tenant gave the landlord a termination notice on a *Tenant's Notice to Terminate Early – Cause* form under Section 21 of the *Residential Tenancies Act, 2018*; Premises Uninhabitable dated 18-March-2024 to vacate on 15-March-2024 (TT#3).

Tenant's Position

10. The tenant testified that he vacated the unit on 15-March-2024 due to a bad rodent and mold infestation problem and he stated that he made the landlord aware that he was leaving on that date through messages on MMS and Whatsapp. The tenant testified that a few days later he decided to give a proper termination notice to the landlord on the *residential tenancies* form. The tenant testified that the landlord was aware of all the issues at the unit, and he decided on 15-March that it was too unsafe to stay there any longer and he stated that he made the decision to vacate immediately.

Analysis

11. Section 34 of the *Residential Tenancies Act, 2018*; Requirements for Notices states:

Requirements for Notices

34. A notice under this Act shall

be in writing in the form prescribed by the Minister;

contain the name and address of the recipient;

identify the residential premises for which the notice is given; and

state the section of this Act under which the notice is given.

The tenant stated that he made the landlord aware that he was vacating the unit on 15-March-2024 however, he did not give a proper notice on that date. I accept that under the circumstances, the tenant felt the need to leave immediately, and I also accept that he made the landlord aware that he was leaving. However, in accordance with Section 34 of the Act as stated above, the tenant did not follow the proper notice requirements on that date.

The tenant did give a notice 3 days later on a proper termination form, and although he had already abandoned the property, I accept that notice to be a valid notice.

Decision

12. The tenant's termination notice dated 18-March-2024 is a valid notice.

Issue # 2: Rent Refunded \$1000.00

Relevant Submission

13. The tenant testified that he paid a last month's rent upfront with the security deposit in the amount of \$1000 and as he had to vacate the premises immediately on 15-March-2024 due to uninhabitable conditions, he is seeking that rent to be refunded to him. The tenant stated that rent was paid in full for the month of March and is he only seeking the extra rent that was paid at the beginning of the tenancy.

Analysis

14. The tenant testified that he made the landlord aware of the rodent and mold infestation problems at the unit dating back to August 2023 and he submitted copies of messages (TT#4) that he had with the landlord to show that conversations were had, and concerns needed to be addressed. The tenant had the right to terminate the tenancy as conditions at the unit were deteriorating. The tenant testified that he paid his rent in full for the month of March and vacated on the 15th. The tenant is seeking the last month's rent that he paid upfront to the landlord to be refunded to him. Based on the tenant's testimony and the exhibits entered into evidence, I accept that the tenant was in his right to end the tenancy immediately under section 21 of the Act and for that reason, I find that the landlord shall refund the tenant's last month's rent in the amount of \$1000.00.

Decision

15. The tenant's claim for rent refunded succeeds in the amount of \$1000.00.

Issue # 3: Utilities Paid \$35

Relevant Submission

16. The landlord testified that the \$35.00 he is seeking under *Utilities* on his application is actually for items he purchased for the unit, and he stated that he is seeking to be reimbursed for this amount.

Analysis

17. This tribunal can only deal with items as listed on the application and as the tenant is not actually seeking utilities to be paid, I am unable to deal with this amount sought by the tenant during this hearing.

Decision

18. The tenant's claim for Utilities paid does not succeed.

Issue # 4: Security deposit refunded \$500.00

Analysis

19. 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).*

20. The landlord failed to make a claim to *Residential Tenancies* against the tenant within the 10-day timeframe as stated in Section 14 above and for that reason, I find that the landlord shall refund the security deposit to the tenant. 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

21. The tenant's claim for security deposit to be refunded succeeds.

Issue # 5: Hearing Expenses \$20.00

22. The tenant paid an application fee of \$20.00 to *Residential Tenancies* and submitted a copy of the receipt to support the claim (TT#5).

Analysis

23. In accordance with Section 12-1 of the *Residential Tenancies Policy Manual*, claimable costs may include the filing fee. As the tenant's claim has been mostly successful, the landlord shall pay the hearing expenses.

Decision

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

Summary of Decision

25. The termination notice is a valid notice.
26. The landlord shall pay the tenant \$1521.95 as follows:

Rent refunded	\$1000.00
Utilities paid	0.00
Security deposit & interest	501.95
Hearing expenses	20.00
Total	\$1521.95

May 29, 2024

Date

Pamela Pennell, Adjudicator
Residential Tenancies Office