

Residential Tenancies Tribunal

Application 2024-0327-NL
Application 2024-0403-NL

Oksana Tkachuk
Adjudicator

Introduction

1. Hearing was called at 1:47 p.m. on 12-June-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 landlord with the notice of hearing electronically by email to: [REDACTED] on 1-May-2024 (TT#1). The tenant also provided proof of email address and proof of 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 had served the tenant with the notice of hearing electronically by email to: [REDACTED] on 31-May-2024 (LL#1). The landlord also provided proof of email address and proof of sent email (LL#2). In accordance with the *Residential Tenancies Act, 2018* this is good service.
6. There was a written fixed term rental agreement which commenced on 1-January-2024 where the termination date was 31-May-2024. The tenant vacated the unit on 31-March-2024. Rent was \$550.00 per month, due on the 1st of each month. A security deposit in the amount of \$300.00 was paid on 29-November-2023 and is in the landlord's possession.
7. The landlord amended the application to decrease *utilities paid* from \$273.24 as per application to \$145.39 and to include hearing expenses.

Issues before the Tribunal

8. The tenant is seeking:
 - Refund of security deposit in the amount of \$300.00

9. The landlord is seeking:
 - Utilities \$145.39
 - Hearing expenses \$20.00
 - Security deposit applied against monies owed \$300.00

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 are the following sections of the *Residential Tenancies Act, 2018*: Section 9: Landlord and tenant relationship and Section 14: Refund of Security Deposit. Also, relevant and considered in this decision is the following section of the *Residential Tenancies Policy Manual* Section 12-1: Recovery of Costs.

Issue # 1: Utilities \$145.39

Relevant Submission

12. The landlord testified that the tenant had the obligation to pay for the part of the utilities bill, and she is seeking utilities to be paid in full. The landlord stated that the tenant had already partially paid for the utilities, and she is looking for \$145.39 for electricity for the month of March 2024, which was the last month of the tenancy.

Landlord's position

13. The landlord is seeking payment for the electricity for the month of March in the amount of \$145.39. The landlord testified that she divided the electricity bill among the five tenants who resided in the rental unit.

Tenant's position

14. The tenant disputes that she owes any money for electricity, asserting that she did not live in the unit during the month of March. The tenant stated that in the beginning of the tenancy she had a verbal agreement with the landlord, that all tenants in the unit would be female. She stated that she paid her share for the utilities in January and February. The tenant stated that a new tenant moved in and brought her male friend to live with her and since that time she felt uncomfortable and not safe. The tenant reported that she and other tenants noticed their belongings were missing, such as food and shower supplies and shoes, the door to the laundry room was found broken and that the male tenant has a key to the unit. The tenant provided proof of conversations with the other tenants to support her claim (TT#3). The tenant stated that she informed the landlord about the presence of the male person in the unit and that she and other tenants felt unsafe. Due to this safety concern the tenant decided to move in elsewhere, although her belongings remained in the unit till 31-March. The tenant stated that as she doesn't know how many people stayed in the unit during the month of March and as she was not living in the unit and did not use

the electricity in March, she does not feel responsible for the electricity bill for that month. The tenant stated that she gave the landlord a termination notice on 25-March-2024 with move out date 31-March-2024 and she submitted proof of sent email (TT#4).

Analysis

15. The Section 9 of the *Residential Tenancies Act* states:

Landlord and tenant relationship

- 9.** (1) *A relationship of landlord and tenant takes effect when the tenant is entitled to use or occupy the residential premises whether or not the tenant actually uses or occupies it.*
- (2) *The doctrine of frustration of contract and the Frustrated Contracts Act apply to a rental agreement.*
- (3) *A common law rule respecting the effect of the contravention of a material covenant by a party to a contract on the obligation to perform by the other party applies to a rental agreement.*
- (4) *Where a relationship of landlord and tenant exists, a covenant concerning a thing related to the residential premises is considered to run with the land whether or not the thing is in existence at the time the relationship commenced.*

16. I accept the testimony provided by the landlord and the tenant and the evidence presented at the hearing. According to the Section 9 of the *Residential Tenancies Act* as stated above, the landlord-tenant relationship exists regardless whether or not the tenant actually uses or occupies the rental premises. The utilities are part of rent and the tenant is responsible for paying her share of the utilities during the tenancy, however the landlord did not provide a copy of the NL Power bill to substantiate the amount she is claiming. The landlord did not support her claim with the necessary electricity bill as required to support her claim and to show the exact amount of monies owed. Without this piece of evidence, it is impossible to determine the exact amount the tenant owes, and as such, I find that the tenant is not responsible for utilities paid as sought by the landlord.

Decision

17. The landlord's claim for utilities paid does not succeed.

Issue # 2: Hearing expenses \$20.00

18. The landlord paid an application fee of \$20.00 to *Residential Tenancies* and is seeking reimbursement. The landlord submitted a copy of the receipt to support her claim.

Analysis

19. In accordance with Section 12-1 of the *Residential Tenancies Policy Manual*, claimable costs may include the filing fee. As the landlord's claim has not been successful, I find that the tenant is not responsible for any hearing expenses.

Decision

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

Issue # 3: Refund of Security deposit \$300.00 /Security deposit applied against monies owed \$300.00

Analysis

21. 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).*

28. The landlord's claim has not been successful as per paragraphs 17, and 20 and as such, the security deposit shall be refunded to the tenant.

29. 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 is currently 1% for 2024.

Decision

30. The tenant's claim for refund of security deposit succeeds in the amount of \$300.00.

Summary of Decision

22. The landlord shall pay the tenant \$301.36 as follows:

Refund of security deposit.....	300.00
Interest	\$1.36
 Total	 \$301.36

June 28, 2024

Date

Oksana Tkachuk
Residential Tenancies Office