Residential Tenancies Tribunal

Application 2024-0343-NL

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:51 p.m. on 29-May-2024.

2. Applicant 1, ▮▮▮▮▮▮▮▮, hereinafter referred to as "the landlord" attended by teleconference. Applicant 2, ▮▮▮▮▮▮▮▮, hereinafter referred to as "the landlord" did not attend but was represented by applicant 1.

3. The respondent, ▮▮▮▮▮▮▮▮, hereinafter referred to as "the tenant" attended by teleconference.

Preliminary Matters

4. The landlords submitted an affidavit with their application stating that they had served the tenant with the notice of hearing electronically by email to: ▮▮▮▮▮▮▮▮▮▮▮▮ on 17-May-2024 (LL#1). The respondent confirmed receipt of the document on that day. In accordance with the *Residential Tenancies Act, 2018* this is good service.

5. There was a written term rental agreement that commenced on 15-December-2023. The tenant never moved into the unit but rather sublet the unit. The tenants that sublet the unit vacated on or about the 3-May-2024. Rent was $2400.00 per month due on the first day of each month. A security deposit of $1800.00 was paid on 8-December-2023 and is in the landlord's possession.

6. Applicant 1 amended the application to delete *premises vacated* as the tenants subletting the unit vacated, to increase *rent paid* from $2050.00 as per the application to $2600.00, and to add *compensation for damages* and *hearing expenses*.

Issues before the Tribunal

7. The landlords are seeking:
   a. Rent paid $2600.00
   b. Compensation for damages $455.00
   c. Hearing expenses $65.00
   d. Security deposit applied against monies owed $1800.00

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 is the following Section of the *Residential Tenancies Act, 2018*: Section 14: Security deposit. Also, relevant and considered in this decision is the following section of the *Residential Tenancies Policy Manuel*: Section 12-1: Recovery of costs.

Issue # 1: Rent Paid $2600.00

<u>Relevant Submission</u>

10. Applicant 1 testified that rent is outstanding in the amount of $2600.00 for the months of March, April and May 2024 and the landlords submitted a rental ledger to support the claim (LL#2). See breakdown of rental leger below:

	Rental Ledger 2024-0343-NL		
Date	Action	Amount	Total
February 29, 2024	Balance		$0.00
March 1, 2024	Rent due	$2,400.00	$2,400.00
March 1, 2024	Payment	-$1,000.00	$1,400.00
April 1, 2024	Rent due	$2,400.00	$3,800.00
April 1, 2024	Payment	-$750.00	$3,050.00
April 15, 2024	Payment	-$1,000.00	$2,050.00
April 30, 2024	Payment	-$1,500.00	$550.00
May 1, 2024	Rent due	$2,400.00	$2,950.00
May 1, 2024	Payment	-$350.00	$2,600.00

<u>Landlord's Position</u>

11. Applicant 1 testified that the tenant never moved into the unit and sublet the unit with intentions to move in at a later date. Applicant 1 testified that rent is due in the amount of $2600.00 for the period of 1-March to 31-May-2024.

<u>Tenant's Position</u>

12. The tenant did not dispute that rent was outstanding in the amount of $2600.00.

Analysis

13. Non-payment of rent is a violation of the rental agreement. Rent is required to be paid under a rental agreement by a tenant during the use or occupancy of a residential premises. Applicant 1 testified that rent is outstanding in the amount of $2600.00 and the tenant did not dispute the claim. The tenancy ended on 3-May-2024 and there were some damages to the unit which resulted in a loss of rental income for that month. Landlords should not incur any loss of rental income due to the actions of tenants, and as such I find that the tenant is responsible for the outstanding rent for the period of 1-March to 31-May 2024 in the amount of $2600.00.

Decision

14. The landlord's claim for rent succeeds in the amount of $2600.000.

Issue # 2: Compensation for Damages $455.00

<u>Landlord's Position</u>

15. Applicant 1 testified that there are damages / losses to the rental unit ranging from damaged interior doors to holes in walls and they are seeking $455.00 to cover the cost of 2 interior doors, a lock and labor to have the work completed.

<u>Tenant's Position</u>

16. The tenant stated that she is aware of the extent of the damages, and she did not dispute any of the costs sought by the landlords for damages.

Analysis

17. The applicants were granted permission to add *compensation for damages* to their application only because the respondent wished to deal with the damages at this time. The tenant testified that she is aware of the extent of the damages, and she did not dispute the claim. For those reasons, I find that the tenant is responsible for the costs of damages in the amount of $455.00.

Decision

18. The landlord's claim for compensation for damages succeeds in the amount of $455.00.

Issue # 4: Hearing expenses $65.00

19. The landlords paid an application fee of $20.00 to *Residential Tenancies* and also incurred the cost of having the affidavit witnessed by a *Notary* in the amount of $45.00. The landlords submitted a copy of the receipts to support the claim (LL#3).

20. Section 12-1 of the *Residential Tenancies Policy Manuel* states:

   Recovery of Costs

   In general, claimable costs may include the following:

   a. The $20.00 filing fee

   b. The costs incurred in the preparation for a hearing

   c. The cost incurred in serving the other party with the application or with the evidence, or serving a witness with a subpoena, such as
   - Process server
   - Registered mail or Xpresspost

21. In accordance with Section 12-1 as stated above, the costs are considered costs incurred in the preparation for a hearing and as the landlord's claim has been successful, the tenant shall pay the hearing expenses.

Decision

22. The landlord's claim for hearing expenses succeeds in the amount of $65.00.

Issue # 6: Security deposit applied against monies owed $1800.00

Analysis

23. 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).*

24. The landlord's claim for losses has been successful as per paragraphs 14, 18 and 22, 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

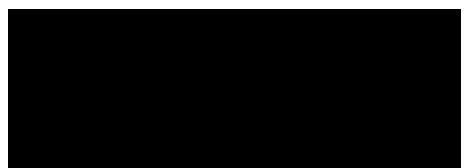25. The landlord's claim for security deposit to be applied against monies owed succeeds.

Summary of Decision

26. The tenant shall pay the landlords $1312.57 as follows:

   Rent paid $2600.00
   Compensation for damages 455.00
   Hearing expenses 65.00
   Less security deposit & interest...... 1807.43

   Total $1312.57

June 18, 2024
Date

Pamela Pennell, Adjudicator
Residential Tenancies Office