

Residential Tenancies Tribunal

Application 2024-0423-NL

Oksana Tkachuk
Adjudicator

Introduction

1. Hearing was called at 9:15 a.m. on 19-June-2024.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as “the tenants” attended by teleconference.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as “the landlords” did not attend.

Preliminary Matters

4. The landlords were not present or represented at the hearing and I was unable to reach them 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 they have been properly served. The tenants submitted an affidavit with their application stating that they had served the landlords with the notice of hearing electronically by email to: [REDACTED] on 6-June-2024 (TT#1). The tenants 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. As the landlords were properly served, and as any further delay in these proceedings would unfairly disadvantage the tenants, I proceeded with the hearing in their absence.
5. There was a written fixed term rental agreement which commenced on 1-August-2023 ending day was on 31-July-2024. The tenants vacated the unit on 30-April-2024. Rent was \$1900.00 per month, due on the 1st of each month. A security deposit was paid in June 2023 in the amount of \$1425.00.

Issues before the Tribunal

6. The tenants are seeking:

- Utilities paid \$768.53.
- Security deposit refunded \$1425.00.

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 deposits.

Issue # 1: Utilities \$768.53

Relevant Submission

9. The tenants are seeking reimbursement for 35% of the electricity bills incurred during the tenancy in the amount of \$768.53.

Tenant's Position

10. The tenants stated that according to the rental agreement they rented one-bedroom, one-bathroom apartment in 2-apartment building. The tenants assert that they paid for electricity consumed by the basement, despite having no access to or use of this space. The tenants stated that the size of the basement was similar to the size of the tenant's apartment. The tenants testified that the landlord utilized the basement as his workshop and was visiting the basement 4-5 times a week. The tenants stated that they paid for lighting, heating, and potentially other electrical uses in the basement without any benefit or agreement to such an arrangement in their rental agreement. The tenants argue that their electricity bills were disproportionately high due to this arrangement. The tenants affirmed that they request a 35% reimbursement of the electricity bills paid during their tenancy. The tenants submitted copies of NL Power bills (TT#3) and the utility ledger to support their claim. See copy of utility ledger below:

Date	2024-05-10												
Customer Name		Meter Number											
Address		Multiplier	1										
Bill Account Num		Next Reading Da	2024-05-23										
Reading Date	Days in Billing Pt	Read/Estimated	Total kWhs Used	Average kWhs U	Total kWhs Billed	Current Demand	Max Demand in I	Billing Demand	Rate	Actual Charge	HST	Residential Enr	Total Charge
2024-04-29	7	Estimated	329	47	329	0	0	0	112	46.59	6.99	0	53.58
2024-04-22	32	Read	1508	47	1508	0	0	0	112	212.46	31.87	0	244.33
2024-03-21	29	Read	2103	73	2103	0	0	0	112	290.15	43.52	0	333.67
2024-02-21	33	Read	2945	89	2945	0	0	0	112	400.1	60.02	0	460.12
2024-01-19	30	Read	2180	73	2180	0	0	0	112	300.21	45.03	0	345.24
2023-12-20	28	Read	1595	57	1595	0	0	0	112	223.82	33.57	0	257.39
2023-11-22	29	Read	1601	55	1601	0	0	0	112	224.61	33.69	0	258.3
2023-10-24	32	Read	841	26	841	0	0	0	112	125.37	18.81	0	144.18
2023-09-22	28	Read	548	20	548	0	0	0	112	86.08	12.91	0	98.99

Analysis

11. I accept all the evidence present on the hearing and tenant's testimony. The rental agreement did not include provisions for covering the utilities of the basement. I accept the tenant's testimony, that the basement size, comparable to the tenants' one-bedroom, one-bathroom apartment, contributed to significantly higher electricity bills, as it was used by the landlord as a workshop. I accept the tenant's testimony, that they have no access and no involvement in use of the basement, making it unjust for them to bear the cost of

electricity for both their apartment and the basement. The total electricity bills paid by the tenants amounted to \$2195.80. Accordingly, the reimbursement to a 35% of this amount totals to \$768.53. Therefore, I find that in the interest of fairness, the tenants are entitled to a 35% reimbursement of the electricity bills paid during their tenancy in the amount of \$768.53.

Decision

12. The tenant's claim for Utilities paid succeeds in the amount of \$768.53.

Issue # 2: Refund of Security Deposit \$1425.00

Tenant's position:

13. The tenants testified that they paid a security deposit in the amount of \$1425.00 in July-2023 and they submitted a proof of payment (TT#3). The tenants testified that they vacated the rental unit on 30-April-2024, and as such they are seeking the refund of security deposit in the amount of \$1425.00.

Analysis

14. 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,*
 - the landlord and tenant may enter into a written agreement on the disposition of the security deposit; or*
 - 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).*

15. Based on the evidence submitted by the tenants and according to the *Residential Tenancies Act, 2018* I find that the landlords are required to return the security deposit to the tenants.

16. Pursuant to the *Residential Tenancies Act, 2018* the landlords must pay interest on a security deposit to the tenants for the entire period that the landlords have 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

17. The tenant's claim for a refund of the security deposit and interest succeeds in the amount of \$1431.70.

Decision

18. The tenant's claim for a refund of the security deposit succeeds.

Summary of Decision

19. The landlords shall pay the tenants \$2200.23 as follows:

Utilities paid	\$768.53
Security Deposit & interest	\$1431.70

Total	\$2200.23
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June 28, 2024

Date

Oksana Tkachuk
Residential Tenancies Office