

## Residential Tenancies Tribunal

Application 2024-0506-NL

Pamela Pennell  
Adjudicator

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### Introduction

1. Hearing was called at 1:47 p.m. on 17-September-2024.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.
3. The respondent, [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 24-June-2024 (TT#1). The landlord confirmed receipt of the document on that date and stated that he submitted a counter application on 4-July-2024. Further review with the *Intake Department of the Residential Tenancies Office* showed that the counter application was never completed, and a file number has not been assigned. In accordance with the *Residential Tenancies Act, 2018* service is good and it was determined that the hearing would proceed. The landlord was advised that he can complete his application and have a later hearing to deal with his claim against the tenant as long as it is completed within the 1-year timeframe allowable under the *Act*.
5. There was a term rental agreement that commenced on 27-February-2022, renewed in March 2023 for another year and renewed again in March 2024 for 6 months. The tenant vacated the unit on 15-June-2024 and removed her possessions on 22-June-2024. Rent was \$1150.00 per month, due on the first of each month. A security deposit of \$750.00 was paid in February 2022 and is in the landlord’s possession.

### Issues before the Tribunal

6. The tenant is seeking:
  - Refund of security deposit plus interest \$753.42
  - Rent refunded \$996.58.
  - 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 are the following sections of the *Residential Tenancies Policy Manual*, Section 7-6: Premises Uninhabitable and Section 12-1: Recovery of Costs.

### **Item # 1: Refund of Security Deposit plus Interest \$753.42**

#### **Analysis**

9. 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).*
10. The landlord did not refund the security deposit to the tenant within the 10-day timeframe as outlined in Section 14 above. The landlord confirmed that the security deposit was paid in February 2022 and is still in his possession. As the security deposit is not an asset of the landlord, I find that the landlord shall refund the security deposit to the tenant.
11. Pursuant to the *Residential Tenancies Act, 2018* the landlord must pay interest on a security deposit to a tenant(s) 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 2022-2023 was 0% and is currently 1% for 2024.

#### **Decision**

12. The tenant's claim for *refund of security deposit* plus interest succeeds.

### **Item # 2: Rent Refunded \$996.58**

#### **Tenant's Position**

13. The tenant testified that she made a request to the [REDACTED] *Inspection Department* to have an inspection completed at the rental unit to determine if the landlord has complied with standard building codes. The tenant testified that the inspection was

completed on 4-June-2024 at 2:00pm and she stated that the inspector found that the unit was not registered with the [REDACTED]. The tenant stated that the unit is illegitimate which makes it uninhabitable, and she gave the landlord an eviction notice on 14-June to vacate the unit on 15-June under Section 21: premises uninhabitable. The tenant testified that she is seeking rent to be refunded for the period of June 4-30 at a prorated amount of \$996.58.

#### Landlord's Position

14. The landlord disputed that the unit was uninhabitable and claims that the tenant gave an invalid termination notice on 14-June-2024 out of retaliation. The landlord stated that the tenant had resided at the unit since March 2022 and never had any problems with the unit until he gave a standard termination notice at the end of May.

#### **Analysis**

15. Section 7-6 of the *Residential Tenancies Policy* states:

##### **Premises Uninhabitable**

*Where a landlord's compliance with laws regarding housing, health or safety conditions are questionable, the tenant may contact the responsible authority (i.e. municipal building inspector or Dept. of Health). If the unit is declared uninhabitable by a regulatory authority, the tenant may give notice to the landlord that the rental agreement is terminated and the tenant is vacating the rental premises immediately.*

16. In accordance with Section 7-6 of the Policy as stated above, I asked the tenant if the [REDACTED] declared the unit uninhabitable and she responded that they did not. I asked the tenant if something happened that made her living conditions in the unit unsafe, and she responded that it did not. I accept the landlord's testimony that the unit is not uninhabitable and that the tenant gave a termination notice out of retaliation. I find that the termination notice issued to the landlord on 14-June-2024 is an invalid notice and for that reason, I find that the landlord is not responsible to refund any rent monies for the month of June 2024.

#### **Decision**

17. The tenant's claim for a *refund of rent* does not succeed.

#### **Issue # 2: Hearing expenses \$20.00**

18. The tenant paid an application fee of \$20.00 to *Residential Tenancies* and is seeking to be reimbursed for the cost. In accordance with Section 12-1 of the *Residential Tenancies Policy*, claimable costs *may* include the filing fee. As the tenant's claim for *rent refunded* has not been successful, I find that the landlord is not responsible for the hearing expenses.

#### **Decision**

19. The tenant's claim for *hearing expenses* does not succeed.

## Summary of Decision

20. The landlord shall pay the tenant \$755.37 as follows:

Refund of security deposit .....	\$750.00
Interest .....	5.37
Total .....	<u>\$755.37</u>

September 20, 2024  
Date



Pamela Pennell, Adjudicator  
Residential Tenancies Office