

Residential Tenancies Tribunal

Application 2024-0602-NL
Counter application 2024-0666-NL

Oksana Tkachuk
Adjudicator

Introduction

1. Hearing was called at 1:45 p.m. on 27-August-2024.
2. The applicants, [REDACTED] attended by teleconference. [REDACTED] did not attend, however she was represented by [REDACTED], and hereinafter referred to as “the tenants”.
3. The respondent and counter applicant, [REDACTED].., represented by [REDACTED], hereinafter referred to as “the landlord” attended via teleconference.

Preliminary Matters

4. The tenants submitted affidavit with their application stating that they had served [REDACTED] [REDACTED] with the notice of hearing via prepaid registered mail tracking# [REDACTED] on 12-July-2024 (TT#1). The landlord’s representative agreed receiving the hearing documents on that day. In accordance with the *Residential Tenancies Act, 2018* this is good service.
5. The landlord’s representative submitted affidavits with their application stating that they had served [REDACTED] and [REDACTED] with the notice of hearing electronically via emails; [REDACTED] [REDACTED] on 25-July-2024 (LL#1,2). The tenant agreed receiving the hearing documents on that day. In accordance with the *Residential Tenancies Act, 2018* this is good service, and we proceed with the hearing.
6. There was a written fixed term rental agreement which was signed on 28-May-2024 to commence on 1-July-2024, ending day was on 30-June-2025 (LL#3). The tenants never moved in. Rent was \$1500.00 per month, due on the 1st of each month. A security deposit was paid on 24-May-2024 in the amount of \$1125.00.

7. The landlord's representative amended their application to decrease electricity bill payment from \$75.00 as per application to \$\$39.90 and to include hearing expenses of \$20.00.

Issues before the Tribunal

8. The tenants are seeking:
 - Security deposit refunded \$1125.00.

The landlord is seeking:

- Rent to be paid \$688.52
- Utilities paid \$39.90
- Damages \$862.50
- Security deposit to be applied against any monies owed.

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
10. 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: Security deposit. Also, relevant and considered in this decision are Sections of the *Residential Tenancies Policy Manual*: Section 6-3: Mitigation on Abandonment of Residential Premises and Section 12-1: Recovery of Costs.

Issue # 1: Rent Paid \$688.52

Landlord's Position

11. The landlord's representative stated that the tenants abandoned the rental unit as they requested early termination of the fixed term rental agreement and never moved into the rental unit. The landlord's representative stated that they are seeking \$688.52 in rent for the period from 1-14 July, as the new tenants moved into the rental unit on 15-July. The landlord is seeking rent to be paid in full.

Tenant's Position

12. The tenant disputed the landlord's claim for rent, arguing that since they never moved into the rental unit, they should not be required to pay rent for any period.

Analysis

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.

13. According to the Section 9 of *The Residential Tenancies Act 2018* as stated above, after signing the rental agreement, the parties are entered into the landlord-tenant relationship and the tenant was granted the right to use or occupy residential premises. Non-payment of rent is a violation of the rental agreement. Rent is required to be paid under a rental agreement by a tenant whether or not the tenant actually uses or occupies it. I accept the landlord's representative's testimony and I find that the tenants are responsible for outstanding rent for the period of 1-14-July-2024, in the amount of \$688.52.

Daily rate: \$1500.00 x 12 mths = \$18000.00
\$18000.00 / 366 days = \$49.18 per day

Decision

14. The landlord's claim for rent succeeds in the amount of \$688.52.

Issue # 2: Utilities paid \$39.90

Landlord's position

15. The landlord's representative claims that according to the rental agreement, the tenants are responsible for 66% of the electricity bill for the entire property since they rent the main floor. The landlord's representative testified that the bill for the whole house for the period of 22-June-2024 to 24-July-2024 was \$142.52. The landlord is seeking electricity bill to be paid in the amount of \$39.90.

Tenant's position

16. The tenant disputed that they owe any money for electricity payment as they never used electricity at the rental premises as they never moved in.

Analysis

17. I accept the landlord's testimony and, in accordance with the rental agreement, acknowledge that the tenants are responsible for 66% of the electricity bill. Therefore, in the interest of fairness, I find that the tenants are responsible for the payment of 66% portion of the electricity bill for the 14-day period, amounting to \$39.90.

Decision

18. The landlord's claim for utilities succeeds in the amount of \$39.90.

Issue # 3: Damages \$862.50

Landlord's position

19. The landlord's representative stated that they incurred costs to advertise the property to find new tenants using leasing services. The landlord's representative stated that they paid \$750 plus taxes, totaling \$862.50 for leasing services. As a result, the landlord found new tenants that moved into the unit on 15-July-2024. The landlord's representative submitted a copy of the invoice to support their claim (LL#4).

Tenant's position

20. The tenant disputed that they owe any money for leasing services.

Analysis

21. According to the Section 6-3 of *Residential Tenancies Policy*: Mitigation on Abandonment of Residential Premises, a landlord has a legal duty to take all reasonable steps to mitigate their damages after a tenant abandons residential premises, such as loss of rental income. Based on landlord's testimony, they started to advertise the property on the next day after they received an email on 25-June-2024 from the tenant where they formally declare their decision not to move into the rental unit and requesting early termination (TT#2). I find that the landlord took immediate steps to mitigate their damages by finding new tenants to move into the property by advertising the property and as such, the tenants are responsible for the costs of leasing services.

Decision

22. The landlord's claim for damages succeeds in the amount of \$862.50.

Issue # 4: Hearing expenses \$20.00

Analysis

23. Section 12-1 of the *Residential Tenancies Policy* states that in general, claimable costs may include the filing fee. The landlord paid \$20.00 for the application and is seeking reimbursement. As the landlord's claim has been successful, the tenants shall pay the hearing expenses.

Decision

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

Issue # 5: Refund of Security deposit \$1125.00

Security deposit to be applied against any monies owed \$1125.00

Tenant's position

25. The tenant claimed that unforeseen situation occurred, preventing him from moving to Newfoundland, consequently, from moving into the rental unit. The tenant stated that he informed the landlord 5 days prior to the moving in date via email on 25-June-2024 that they would not be moving in and requested a refund of security deposit of \$1125.00. The tenant provided proof of sent email and a proof of sent security deposit to support their claim (TT#2,3).

Landlord's position

26. The landlord's representative disputed the tenant's claim, stating that they have incurred significant losses due to the tenant's failure to move in.

Analysis

27. 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 for losses has been successful as per paragraphs 14, 18, 22 and 24 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 in 2024 is 1%.

Decision

29. The landlord's claim for security deposit plus interest in the amount of \$1127.86 to be applied against monies owed succeeds.

Summary of Decision

30. The tenants shall pay the landlord \$483.06 as follows:

Rent	\$688.52
Damages	\$862.50
Utilities paid	\$39.90
Hearing expenses	\$20.00
Less Security Deposit & interest ..	\$1127.86

Total \$483.06

September 3, 2024

Date

Oksana Tkachuk
Residential Tenancies Office