

Residential Tenancies Tribunal

Application 2024-0645-NL

Oksana Tkachuk
Adjudicator

Introduction

1. Hearing was called at 1:46 p.m. on 5-September-2024.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant” attend via teleconference.

Preliminary Matters

4. The landlord submitted affidavit with his application stating that he had served the tenant with the notice of the hearing electronically by email to: [REDACTED] on 22-August-2024 (LL#1). The tenant agreed receiving notice of the hearing on that date. In accordance with the *Residential Tenancies Act, 2018* this is good service.
5. There was a written term rental agreement that commenced on 1-December-2023 until 30-November-2024, which terminated on 30-June-2024. Rent was \$2450.00 per month due on the first of each month. The security deposit in the amount of \$1837.50 was collected on 1-December-2023 and is in the landlord’s possession.
6. The landlord amended the application to include hearing expenses of \$20.00. The security deposit will be applied against any monies owed.

Issues before the Tribunal

7. The landlord is seeking:
 - Rent paid \$1225.00;
 - Hearing expenses of \$20.00;
 - Security deposit of \$1837.50 to be applied against any monies owed.

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 are the following sections of the *Residential Tenancies Act, 2018*: Section 14: Security deposit and Section 18: Notice of termination of rental agreement. Also, relevant and considered in this decision is the following section of the *Residential Tenancies Policy*: Section 12-1 Recovery of Costs.

Issue # 1: Rent Paid \$1225.00

Landlord's Position

10. The landlord stated that the tenant sent an email on 26-May-2024, indicating that they will vacate the residential property on 30-June-2024, despite being bound by a fixed-term rental agreement scheduled to end on 30-November-2024. The landlord testified that the tenant vacated the rental unit on 30-June-2024. Although, the landlord was able to secure new tenants, their tenancy did not commence until 16-July-2024. The landlord submitted a rental agreement with new tenants to support his claim (LL#2). As a result, the landlord is seeking rent for the period from 1st to 15-July-2024 in the amount of \$1225.00. The landlord is seeking rent to be paid in full as he finds that the tenant is responsible for the outstanding rent for this period. The landlord submitted a rental ledger to support the claim (LL#3).

Tenant's position

11. The tenant disputed that he owes any money to the landlord. The tenant stated that he vacated the rental unit on 30-June-2024, in accordance with the termination notice he believes to be valid. The tenant also asserted that the new tenants moved into the unit on 4-July-2024, and therefore he sees no reason to pay any rent for the period in question. Additionally, the tenant claimed that the landlord breached the rental agreement by entering the rental unit without prior notice both in December and on 26-June-2024, what was the reason for him to move out.

Analysis

12. Section 18 (1) (c) of The *Residential Tenancies Act 2018*, states:

Notice of termination of rental agreement

18. (1) A tenant shall give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises

(c) not less than 2 months before the end of the term where the residential premises is rented for a fixed term.

....

13. I accept the testimony of both parties that on 26-May-2024 there was an email from the tenant indicating their intent to move out on 30-June-2024. I accept that the tenant vacated the unit on 30-June-2024, prior to the fixed-term rental agreement's end date of 30-November-2024. According to the section 18 of The *Residential Tenancies Act*, as stated above, I find that the tenant did not provide a proper termination notice to the landlord. I accept landlord's testimony that he had no intention of breaching the rental agreement, as he was in the unit on the dates that tenant mentioned, for the purpose of necessary repairs,

which included fixing the garage doors and addressing other maintenance issues. I find that the landlord has demonstrated that new tenants moved into the unit on 16-July-2024, by providing a new rental agreement. Therefore, the landlord should not bear any financial losses resulting from tenant's early termination. Consequently, I find the tenant remains responsible for the outstanding rent for the period from 1st to 15-July-2024 in the amount of \$1204.91. See the calculation below:

$$\begin{aligned}\text{Daily rate: } & \$2,450.00 \times 12 \text{ mths} = \$29,400.00 \\ & \$29,400.00 / 366 \text{ days} = \$80.32 \text{ per day}\end{aligned}$$

Decision

14. The landlord's claim for rent succeeds in the amount of \$1204.91.

Issue # 2: Hearing expenses \$20.00

Analysis

15. 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 are seeking reimbursement. As the landlord's claim has been successful, the tenant shall pay the hearing expenses.

Decision

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

Issue #3 Security deposit applied against monies owed \$1837.50

Analysis

17. 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).

18. The landlord's claim for losses has been successful as per paragraph 14 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 the 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 2023 was 0% and is currently 1% for 2024.

Decision

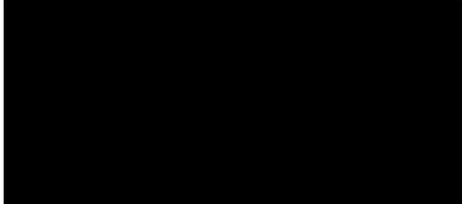
19. The landlord's claim for security deposit plus interest in the amount of \$1,850.05 to be applied against monies owed succeeds.

Summary of Decision

20. The landlord shall retain \$1224.91 from the security deposit to cover *rent paid* and *hearing expenses*.

September 13, 2024

Date



Oksana Tkachuk, Adjudicator
Residential Tenancies Office