

Residential Tenancies Tribunal

Application 2024-0260-NL

Michael Reddy
Adjudicator

Introduction

1. Hearing was held on 6 June 2024 at 9:00 AM.
2. The applicant, [REDACTED], hereinafter referred to as the tenant, attended via teleconference. [REDACTED] did not attend the hearing.
3. The respondent, [REDACTED], hereinafter referred to as the landlord, attended via teleconference.

Preliminary Matters

4. The tenant submitted an affidavit (T # 1) stating the landlord was served notice of the hearing at 12:01 PM on 24 May 2024 electronically ([REDACTED]). The landlord did not dispute this service.
5. There was a written fixed term agreement which commenced on 1 September 2023 (T # 2) until 16 March 2024 when the tenants vacated the rental premises. Rent was set at \$1,100.00 due on the first of each month. There was a security deposit of \$825.00 collected on the tenancy on 6 August 2023. Both parties testified \$355.00 of the security deposit had been returned to the tenants within 10 days of vacating the rental premises.
6. In a proceeding under the *Residential Tenancies Act, 2018*, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicants must establish that their account of events is more likely than not to have happened.

Issues before the Tribunal

7. The tenants are seeking the following:
 - Refund of the Security Deposit in the amount \$470.00 plus interest
 - Refund of rent in the amount \$550.00
 - Hearing expenses in the amount of \$20.00

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 claim are Sections 14 and 18 of the *Act*, along with Policy 10-002 of the *Residential Tenancies Program, Policy- Interest Rates for Security Deposits*.

Issue 1: Security Deposit

Tenant Position

10. The tenant testified he paid a security deposit of \$825.00 on 6 August 2023. He testified the landlord had returned \$355.00 of the security deposit within 10 days after he vacated the rental premises. The tenant stated after he vacated the rental premises on 16 March 2024, the landlord informed him he would not be returned the remainder of the security deposit (\$470.00) due to damages. He disputed this claim and stated he had asked the landlord for receipts and evidence for the landlord keeping the security deposit which he was never provided. The tenant was seeking the remainder of the security deposit in the amount of \$470.00 plus interest.
11. The tenant testified the landlord informed him that the remainder of the security deposit was in relation to a container he installed in the rental premises. This item was described as a small plastic container he used to hold dry food which the landlord chose to remove, which resulted in the need for plastering and painting. The tenant questioned the need to remove this item and disputed the alleged damages as the landlord never provided him with any evidence (i.e. receipts) to support the landlords claim to retain the security deposit. Along with his application, the tenant supplied video evidence (T # 3) of the rental premises prior to his vacating.

Landlord Position

12. The landlord did not dispute he returned \$355.00 of the security deposit to the tenant under 10 days after he vacated the rental premises. He testified he asked the tenant if he wished to have the container returned. The landlord stated he removed the item which resulted in damages to the rental premises. The landlord offered there was a need to hire a cleaning company after the tenant vacated.

Analysis

13. Section 14 of *the Act* is applicable and relevant to this issue. As noted in Section 14:

Security Deposit

14 (7) *A landlord shall credit interest to the tenant on the full amount or value of the security deposit, at the rate prescribed by the regulations, during the time the security deposit is held by the landlord.*

(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 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.

14. The tenant filed his Application for Dispute Resolution on 26 March 2024 (Exhibit T # 4). The landlord did not file an application within the identified timelines of the Act to claim for all or part of the security deposit.
15. This decision will rule on the remainder of the security deposit (\$470.00) as both parties testified \$355.00 had been returned to the tenants.
16. Interest on security deposits can be calculated with reference to Policy 10-002 of the *Residential Tenancies Program, Policy- Interest Rates for Security Deposits*.

Interest Calculation

Year	Number of Days	Rate	Amount	Interest
2023	(122 days / 365 days)	x 0.00%	x \$0470.00	= \$0
2024	(159 days / 366 days)	x 1.00%	x \$0470.00	= \$2.04
Original Deposit				\$0470.00
+ Total Interest				\$2.04
Total				\$472.04

Decision

17. The landlord shall return the security deposit to the tenants in the amount of **\$472.04**.

Issue 2: Refund of Rent

Tenant Position

18. The tenant testified he informed the landlord at the end of February 2024 he would be vacating the rental premises by 15 March 2024. He stated he informed the landlord he would sublet the rental premise which the landlord supported. Along with his application, the tenant supplied a text message between he and the landlord about this situation (T # 5). The tenant paid \$1,100.00 for March 2024 and he was seeking reimbursement of half of this payment (\$550.00).

Landlord Position

19. The landlord testified the tenant texted him on 28 February 2024 indicating he would be vacating the rental premises within 15 days and that he would sublet the rental premises between April and August 2024. The landlord stated the tenant had paid \$1,100.00 for March 2024 and disputed that a portion of this payment should be reimbursed to the tenant. The landlord described the tenant as breaking the fixed term and the *Act* indicates two clear months are required for a fixed term notice.

Analysis

20. Both the tenant and the landlord testified the rental agreement was a fixed term which commenced on 1 September 2023. Both also testified the tenant had vacated the rental premises by 16 March 2024. Section 18 of the *Act* is applicable and relevant to this issue. As noted in Section 18:

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.

21. In addition to the lack of compliance with the timelines of the *Act*, Sections 34 is applicable and relevant to the application. As noted in Section **34**, a notice under this *Act* shall
- a) be in writing in the form prescribed by the minister;
 - b) contain the name and address of the recipient
 - c) identify the residential premises for which the notice is given; and,
 - d) state the section of the *Act* under which the notice is given
22. Both parties testified the tenant provided notice of his intention to terminate the rental agreement did not comply with the timeline and requirements identified in the *Act*, and rent was set at \$1,100.00 per month, due on the first of each month. Furthermore, both parties did not dispute the tenant paid March 2024 rent in full. The tenant also provided evidence (T # 5) which reveals the landlord had been supportive of the tenant vacating the rental premises.
23. As the tenant failed to comply with the time requirements and requirements of a termination of notice, he vacated the rental premises with insufficient notice to do so, I do not have the authority to override the *Residential Tenancies Act* and the notice required of a fixed term arrangement.

Decision

24. The tenant's claim for refund of rent fails.

Issue 3: Hearing Expenses

25. Along with his application, the tenant provided a copy of the receipt for the hearing expense (LL # 6).

Decision

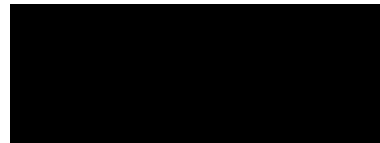
26. As the tenant's application partially succeeds, the landlord shall be responsible for the \$20.00 hearing expense.

Summary of Decision

27. The tenants are entitled to **\$492.04** determined as follows:

- Refund of Security Deposit plus interest.....\$472.04
- Hearing Expenses.....\$20.00
- Total.....**\$492.04**

26 September 2024
Date



Michael Reddy, Adjudicator
Residential Tenancies Office