

Residential Tenancies Tribunal

Application [REDACTED]

Decision 20-0536-05

John. R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:04 am on 23 February 2021 via teleconference.
2. The applicant, [REDACTED] hereinafter referred to as “the tenant”, participated in the hearing. The respondent, [REDACTED] hereinafter referred to as “the landlord”, did not participate.

Issues before the Tribunal

3. The tenant is seeking the following
 - An order for a refund of the security deposit in the amount of \$400.00,
 - An order for a return of possessions valued at \$50.00, and
 - An order for a payment of utilities in the amount of \$85.57.

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this case is section 14 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

6. The landlord was not present or represented at the hearing and I was unable to reach him by telephone. 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 the hearing 10 clear days prior to the hearing date and, where a respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent’s absence so long as he has

been properly served. The tenant submitted an affidavit with her application stating that she had served the landlord with notice of the hearing, by e-mail, on 11 January 2021 and she also submitted copies of previous e-mail exchanges she had had with the landlord at that e-mail address. The landlord has had 42 days to provide a response. As the landlord was properly served, and as any further delay in these proceedings would unfairly disadvantage the tenant, I proceeded with the hearing in his absence.

Issue 1: Refund of Security Deposit - \$400.00

Relevant Submissions

7. The tenant stated that she had entered into a monthly rental agreement with the landlord on 25 April 2020 and a copy of that executed agreement was submitted with her application (█ #1). The agreed rent was set at \$800.00 per month and it is acknowledged in the rental agreement that the tenant had paid a security deposit of \$400.00
8. In mid-September 2020 the tenant issued the landlord a written notice informing him that she would be vacating at the end of the month, and the tenant stated that she vacated the unit around 04 October 2020.
9. The tenant stated that the landlord did not return the security deposit to her after she vacated and she testified that she had not entered into any written agreement with the landlord on its disposition.
10. The tenant is seeking an order for refund of the security deposit.

Analysis

11. Section 14 of the *Residential Tenancies Act, 2018* deals with security deposits, and the relevant subsections state:

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).

(12) A landlord who does not make an application in accordance with subsection (11) shall return the security deposit to the tenant.

12. I accept the tenant's claim that she had paid \$400.00 to the landlord at the beginning of her tenancy as a security deposit and that it has not been returned to her. I also accept her claim that she had not entered into any written agreement with the landlord on the disposition of that deposit.
13. As the landlord has not made an application to the Director of Residential Tenancies to determine the disposition of the security deposit, he is required, as per subsection 14.(12) of the Act, to refund the full amount of the security deposit to the tenant.

Decision

14. The tenant's claim for refund of the security deposit succeeds in the amount of \$400.00.

Issue 2: Utilities - \$85.57

Relevant Submissions

15. The tenant stated that she had an agreement with the landlord that she would have the electricity account placed in her name during her tenancy. As the basement apartment's electricity was also on the same meter, the landlord agreed to reimburse her for 50% of the charges she was billed monthly.
16. The tenant stated that the landlord had been living up to that agreement during her tenancy, except for the last month.
17. The tenant submitted her electricity bill for September 2020 (█#2) showing that she was charged \$100.20 and she is seeking reimbursement of half of that amount.

Analysis

18. I accept the tenant's testimony in this matter and I find that the landlord is responsible for 50% of the amount she was charged for electricity usage for the last month of her tenancy. I calculate that amount to be \$50.10.

Decision

19. The tenant's claim for a payment of utilities succeeds in the amount of \$50.10.

Issue 3: Missing Possessions - \$50.00

Relevant Submissions

20. The tenant stated that she had accidentally left behind the power nozzle for her vacuum cleaner when she vacated the rental unit. She was informed by the landlord that he had removed that nozzle from the unit before the new tenants moved in and he is currently holding it for her at his home.
21. The tenant estimated that that nozzle is worth \$50.00, but she stated that she would prefer that it be returned to her than that this Section issue her any monetary compensation for it.

Analysis

22. Section 47 of the *Residential Tenancies Act, 2018* outlines the sort of orders the Director may make after hearing an application and the following subsection is relevant to this portion of the tenant's claim:

Order of director

47. (1) After hearing an application the director may make an order

...

(f) directing a landlord to deliver to a tenant possession of personal property taken in contravention of this Act or the rental agreement or to compensate a tenant for the value of the personal property taken

23. No evidence was presented at the hearing to establish that the landlord had taken or seized the tenant's power nozzle for her vacuum cleaner. Rather, she tenant accidentally left it behind. That is no fault of the landlord.
24. As the landlord had not contravened the *Act* or the rental agreement, the tenant's claim for a return of possessions does not succeed. I suggest the tenant make arrangements with the landlord to collect that nozzle from his home, as he had offered.

Decision

25. The tenant's claim for an order for a return of missing possessions does not succeed.

Summary of Decision

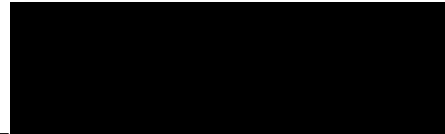
26. The tenant is entitled to a payment of \$450.10, determined as follows:

- a) Security Deposit \$400.00
- b) Utilities..... \$50.10

- c) Total Owing to Tenant \$450.10

19 May 2021

Date



John R. Cook
Residential Tenancies Tribunal