

Residential Tenancies Tribunal

Application [REDACTED]

Decision 2021-0123-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:10 AM on 05 October 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”, was not in attendance.

Issues before the Tribunal

3. The tenant is seeking an order for a refund of the security deposit in the amount of \$2175.00.

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* and rule 29 of the *Rules of the Supreme Court, 1986*.

Preliminary Matters

6. The landlord was not present or represented at the hearing. I contacted her by telephone at the start of the hearing and she informed me that she would not be participating as she was at work. 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 the 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 his application stating that he had served the landlord with his application on 15 March 2021, via e-mail. This hearing was originally scheduled to be heard in June 2021, and on 24 June 2021, this Tribunal informed the landlord that it had been rescheduled to 05 October 2021. As the landlord was properly served, and any further delay in these proceedings would unfairly disadvantage the tenant, I proceeded with the hearing in her absence.

7. On 31 March 2021, the landlord had filed her own application, [REDACTED] which had also been rescheduled to be heard at this time. As the landlord did not participate in the hearing and as she presented no evidence in support of her claim, her application is dismissed.

Issue 1: Refund of Security Deposit - \$2175.00

Relevant Submissions

8. The tenant stated that he had entered into a 1-year, fixed-term lease with the landlord, commencing 01 April 2019, and a copy of that executed agreement was submitted with his application. The agreed rent was set at \$2900.00 per month, and it is acknowledged in the lease that the tenant had paid a security deposit of \$2175.00 on 07 March 2019.
9. The tenant terminated his agreement with the landlord and he vacated the unit on 31 October 2020.
10. The tenant stated that after he moved out, the landlord did not return the security deposit to him, and he testified that he had not entered into any written agreement with her on its disposition.
11. The tenant is seeking an order for a return of the full amount of the security deposit.

Analysis

12. 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).

13. The evidence presented by the tenant shows that he had paid a security deposit of \$2175.00 on 07 March 2019, and I accept his claim that that deposit has not been returned to him. I also accept his claim that he had not entered into any written agreement with the landlord on the disposition of that deposit.
14. The landlord had made application to the Director on 01 April 2021 seeking a payment of \$3193.78 in compensation for damages, but that application was not made within the 10-day period contemplated under subsection 14.(10)(b). In any case, as the landlord had not attended the scheduled hearing, that application was dismissed.
15. Accordingly, the landlord shall refund to the tenant the full amount of the security deposit.

Decision

16. The tenant's claim for refund of the security deposit succeeds in the amount of \$2175.00.

29 August 2022

Date

