

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0234-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:11 AM on 18 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 also in attendance.

Issues before the Tribunal

3. The tenants are seeking the following:
 - a. An order for refund of rent in the amount of \$400.00; and
 - b. An order for the security deposit to be refunded in the amount of \$700.00.

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 are section 14 of the *Residential Tenancies Act, 2018*.

Issue 1: Refund of Rent - \$400.00

Issue 2: Refund of Security Deposit - \$700.00

Relevant Submissions

The Tenant's Position

6. The tenant stated that she had entered into a 6-month, fixed-term rental agreement with the landlord on 26 June 2020, and a copy of the executed lease was submitted with her application (T #1). The monthly rent was set at \$1400.00, exclusive of utilities, and a security deposit in the amount of \$700.00 was collected.
7. In December 2020, the tenant acquired a pet cat, and as a condition of having that pet, the landlord collected an additional \$400.00 from the tenant as a "pet deposit".
8. The landlord terminated the rental agreement in the spring of 2021, and the tenant vacated on 30 April 2021.
9. The tenant stated that the landlord had tried to return to her, by e-mail transfer, \$606.46 of the deposits she had paid, but she would not accept that transfer as she was seeking to have all of the funds returned to her, not a portion. She also claimed that the e-mail address listed in that transfer was incorrect, and she was concerned that she would be unable to access the funds.
10. The tenant is seeking a refund of the \$400.00 pet deposit as well as a refund of the whole \$700.00 security deposit. She testified that she had not entered into any written agreement with the landlord on the disposition of those deposits.

The Landlord's Position

11. The landlord acknowledged that he collected a \$400.00 pet deposit and a \$700.00 security deposit. He testified that he attempted to refund a portion of the security deposit but that it was rejected by the tenant. The landlord also testified that there was no written agreement between himself and the tenant regarding the disposition of the deposits and he also testified that he has not submitted a claim to this Tribunal seeking authorization to retain the deposits collected.

Analysis

12. The *Residential Tenancies Act, 2018* does not include language regarding pet deposits, but section 14.(2) states:

Security deposit

14. (2) Where a landlord receives from a tenant money or other value that is more than the amount of rent payable in respect of the residential premises, the money or value shall be considered to be a security deposit.

13. As the that payment of \$400.00 in December 2020 was a payment over and above the rent payment of \$1400.00 the tenant had paid that month, that

\$400.00 shall be considered a payment of security deposit, meaning that the total deposit held by the landlord comes to \$1100.00 (\$700.00 + \$400.00).

14. The other relevant subsections of section 14 of the Act state:

(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.

15. It was not disputed that the landlord and tenants had not entered into any written agreement on the disposition of the \$1100.00 security deposit and that the landlord had not made an application to the Director of Residential Tenancies to determine its disposition.

16. Accordingly, as per subsection 14.(12) of the Act, the landlord is required to refund the full amount of the security deposit to the tenant.

Decision

17. The tenant's claim for refund of the security deposit succeeds in the amount of \$1100.00.

19 August 2022

Date

