

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0240-05

Jacqueline Williams
Adjudicator

Introduction

1. The hearing was called at 9:47 am on 02 August 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 an order for a refund of the security deposit in the amount of \$175.00.

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 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 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 [REDACTED] #04) with her

application stating that she had served the landlord, by e-mail, on July 19, 2021. The landlord has had 14 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 - \$175.00

Relevant Submissions

7. The tenant stated that she had entered into a written agreement (█#02) for a month to month lease, on January 1, 2021. The agreed rent was set at \$350.00 a month due on the 1st. She also paid a security deposit of \$175.00 when she paid her first month's rent.
8. With her application, the tenant submitted a copy of her receipt for the security deposit (█#03) showing that she had paid the landlord \$175.00 on January 01, 2021.
9. The tenant testified that she sent the landlord a written notice on March 31, 2021 that she would be ending their rental agreement on April 30, 2021. She stated that she moved at the end of April.
10. The tenant testified that she had spoken with the landlord and he had agreed to pay back the security deposit.
11. The tenant complained that the landlord had not returned the security deposit to her after she moved out and she is seeking an order for its return. She further testified that she had not entered into any written agreement with the landlord on the disposition of that 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).

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

13. I accept that the tenant's paid a security deposit of \$175.00 and that it had not been returned to her after she had moved out of the rented premises. I also accept the tenant's claim that she had not entered into any written agreement with the landlord on the disposition of that deposit.
14. As the landlord has not made 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

15. The tenant's claim for refund of the security deposit succeeds in the amount of \$175.00.

September 8, 2021

Date

