

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0247-05

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:07 a.m. on 09-February-2022.
2. The applicants, [REDACTED], hereinafter referred to as “tenant1 and tenant2” attended by teleconference.
3. The respondents, [REDACTED], hereinafter referred to as “landlord1 and landlord2” attended by teleconference

Preliminary Matters

4. This property is managed by [REDACTED] the property owners are in attendance as stated above.
5. Tenant2 said she sent the company the notification of hearing and hearing package on 26-January-2022. The landlord2 said that they only received notification of the hearing from [REDACTED] on 07-February-2022. The property management company told the property owners that they could attend on their behalf for a fee, otherwise, the owners would have to attend. The owner said that they do have the hearing package and the information for the hearing. The tenants properly served the property management company and as all parties are present, I proceeded with the hearing.

Issues before the Tribunal

6. The tenants are seeking a security deposit refund of \$375.00.

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.

8. Also relevant and considered in this decision is the following section of the *Residential Tenancies Act, 2018*: Section 14: Security deposit.

Issue: Security deposit refund of \$375.00

Tenants' Position

9. Tenant2 said that they took possession of the property on or about 09-December-2019. She said they signed a lease agreement (TT#01) for a one year term from 01-January-2020 until 31-December-2020. After this agreement ended the term became monthly. The rental period was from the 1st day of the month to the last, with \$1,350.00 rent due on the 1st day of each month. They paid a security deposit of \$1,012.50 on 09-December-2019 before moving in. They provided the copy of the receipt for the first month's rent and this security deposit (TT#02). They moved out of the house 15-April-2021.
10. Tenant2 said that when they moved in they did a walk through with the property managers. When they moved out, they turned in their keys and then the property managers did a walk through on their own. They then provided the tenants with a condition report package that included pictures (TT#03).
11. The tenants provided an email thread (TT#04) where the property managers are requesting to replace a light and to hire a company to clean up the scuff marks on the wall.
12. Tenant2 said that she broke the light fixture while cleaning and she agreed to this coming from the security deposit. She said that the walls were in good shape when they moved in, that she acknowledges that there are scuff marks, from wear and tear, and that she also agreed for them to have that work done. The issue for the tenants is that they do not agree with the amount charged, \$375.00, so they then applied to the director for reimbursement of this portion of the security deposit to be refunded.
13. Tenant2 confirmed that the breakdown of the security deposit (LL#05) was as follows:

Refunded	\$375.99
Light fixture	261.51
Cleaning of scuff marks	<u>375.00</u>
Total	<u>\$1,012.50</u>

Landlords' Position

14. Landlord1 agrees with the terms of the rental agreement.
15. Landlord1 said that there were other issues in the condition report, however, they only addressed the light fixture and the scuff marks with the tenants. They completed the repairs after the consent of the tenants. He provided the board with the bill (LL#01) from

the cleaning company, [REDACTED] The bill shows 7.5 hours @ \$50.00 totaling \$375.00.

16. Landlord2 said that they only received notification of the hearing on 07-February-2022. At that time their property management company offered to attend on their behalf for a fee. The landlords received the hearing package from the property management company and have attended the hearing. They believe that they had a written agreement with the tenants to hire the cleaning company.

Analysis

17. Security deposits are covered under Section 14 of the Residential Tenancies Act, 2018, as follows:

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) Where a landlord does not make an application under paragraph (10)(b) or return the security deposit in accordance with subsection (12), the director may, without conducting a hearing, make an order requiring the landlord to return the security deposit to the tenant.

(14) Where a landlord does not make an application under subsection (11), he or she is not prohibited from making an application under section 42 other than an application with respect to a claim against the security deposit.

18. A security deposit is not an asset of the landlord and should be returned to a tenant 10 days after the tenant vacates the premises. In this situation, the landlords believed that the tenants had entered into a written agreement for the disbursement of this deposit, as provided in the email messages provided by the tenant (TT#04) and in compliance with Section 14(10)(a). However, once the tenants determined that they were seeking

reimbursement of this deposit under Section 14 (11) the landlord has 10 days to make application under Section 14(10)(b), to the director, to determine the disbursement of this deposit. As the landlord did not file an application in the allotted time, and in accordance with Section 14(12) the landlord is required to return the deposit.

19. The tenants claim for refund of \$375.00 of the security deposit succeeds.

Summary of Decision

20. The tenants' claim for reimbursement of \$375.00 of the security deposit succeeds; the landlords shall return \$375.00 to the tenants.

February 18, 2022
Date

