

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0320-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:06 PM on 23 November 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 tenant”, was also in attendance.

Issues before the Tribunal

3. The tenant is seeking the following:
 - An order for a refund of a \$200.00 security deposit; and
 - An order for a payment of \$4460.00 in compensation for inconvenience.

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

Preliminary Matters

6. The landlord called the following witness:
 - [REDACTED] – the landlord’s reservation manager

Issue 1: Security Deposit - \$200.00

Relevant Submissions

The Tenant's Position

7. The tenant stated that she had entered into a verbal rental agreement with the landlord in late August 2020. The agreed rent was set at \$700.00 per month, and that rent was reduced to \$600.00 after the first 2 months. The tenant also testified that she had paid a security deposit of \$200.00 on 17 August 2020, and a copy of that e-Transfer receipt was submitted with her application.
8. On 01 May 2021 the tenant issued the landlord a termination notice and a copy of that notice was submitted with her application. That notice was issued under section 23 of the *Residential Tenancies Act, 2018* (notice where landlord contravenes peaceful enjoyment and reasonable privacy), and it had an effective termination date of 10 May 2021. The tenant stated that she vacated on 09 May 2021.
9. The tenant stated that the landlord had not returned the security deposit to her after she vacated and she testified that she had not entered into any written agreement with him on its disposition. She is seeking an order for a refund of the full amount of that deposit.

The Landlord's Position

10. The landlord acknowledged that he had not returned the security deposit to the tenant after she vacated, and he also acknowledged that he had not entered into any written agreement with her on its disposition.
11. The landlord stated that he had retained that deposit as the tenant had not paid her rent for May 2021.

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. There is no dispute that the tenant had paid a \$200.00 security deposit, that it had not been returned to her, and that the landlord and the tenant had not entered into any written agreement on its disposition. Furthermore, the landlord had not made application to the Director seeking a determination of the disposition of that deposit.
14. As such, the landlord is required, as per section 14.(12) of the Act, to refund the full amount of that deposit to the tenant.

Decision

15. The tenant's claim for a refund of the security deposit succeeds in the amount of \$200.00.

Issue 2: Compensation for Inconvenience - \$4460.00

Relevant Submissions

The Tenant's Position

16. This portion of the tenant's claim concerns 2 items: she is seeking a payment of \$700.00 as a rental rebate for the period from 01 March to 10 May 2021, as she claims she only had use of 30% of the common areas at the complex, and she is also seeking a payment of \$3760.00, which is half of her actual income for that same period as she had suffered a loss of productivity.

Loss of 30% of Common Area

17. The tenant rented a private bedroom in this complex, and she shared a common dining room and kitchen with 2 other people who were also renting rooms.

18. The tenant stated that on 02 March 2021, the landlord commenced renovations at the unit, which included the installation of a new window in the shared kitchen. She claimed that because of that renovation, she was not able to use the shared kitchen 30% of the time because it was being used by other people and also because there was a lot of noise and dust in the area.
19. The tenant also stated that when she moved into the unit, she was assured that the bathroom she was to use was for her exclusive use, and that she did not have to share it with the other residents who were renting rooms there. She claimed, however, that these other residents would use that bathroom, and she complained that one of them even used her private towels.

Loss of Productivity

20. The tenant testified that when she moved into the unit, she had informed the landlord that she would be working out of her room and she required that there be no loud noises at the complex. She stated that she was assured by the landlord that there would be no disruptions.
21. However, the tenant claimed that, without notice, the landlord began renovations in the kitchen in early May 2021, and these renovations were very noisy and they had an impact on her ability to complete her work in a reasonable amount of time. She claimed that, although she did indeed complete her work, she claimed that it took her 50% longer to get it done, and she had to work long hours into the night.
22. The tenant also claimed that she had suffered a bout of high blood pressure as a result of the stress she had to endure living through all of this noise, and as a result of threats the landlord had made towards her. She testified that the landlord had stated that if she did not pay her rent for May 2022, he would lock her out of her apartment and destroy her possessions. The tenant submitted a copy of triage assessment with her application showing that she had visited the emergency room on 02 May 2022 and was treated for high blood pressure.
23. With her application, the tenant submitted a copy of her banking records showing the wages she had received from her employers between March and May 2021. She argued that because she had to work 50% longer to complete her work, the landlord is responsible for compensating her for her labour, and she calculated that amount to be \$3760.00, which is half of the total wages she collected during that period.

The Landlord's Position

Loss of 30% of Common Area

24. The landlord acknowledged that there were renovations taking place at the complex, but he denied that any renovations were taking place in any of the common areas the tenant was sharing, but, rather, they were being undertaken

in a separate unit altogether. He denied that any windows were replaced in the tenant's kitchen and stated that the same windows are there to this day. That testimony was corroborated by his witness, ■■■.

25. Regarding the bathroom, the landlord stated that the other 2 residents at the complex had their own private bathrooms in their rooms, while the tenant was required to use a bathroom that was in the shared common area in the stairwell. He stated that as this bathroom was in a shared area, it was deemed to be a shared bathroom, but he did acknowledge that he had informed the tenant it would not be used by those other residents too often as they had their own bathrooms. He denied, though, that he had ever informed her that it was for her exclusive use.

Loss of Productivity

26. The landlord again stated that no renovations were taking place in any part of the complex that the tenant had access to, and he also claimed there was very little noise generated as a result of these renovations. He stated that he had carried out the work by himself, and that it amounted to little more than plastering and painting. Additionally, the work was done in the middle of the day during regular business hours.
27. The landlord also claimed that on those occasions where the tenant had asked that he keep the noise down, as she may have had a special meeting, for example, he would immediately stop his work for several hours. That testimony was also corroborated by ■■■. The landlord claimed that there was no occasion where he had not complied with this sort of request from the tenant.
28. With respect to the tenant's high blood pressure, the landlord argued that the tenant had presented no evidence at the hearing to establish that there was any connection between the renovations, or any other action of his, and her medical condition.

Analysis

29. Regarding the alleged loss of 30% of the common areas, I was not persuaded that the tenant had made her case at the hearing. The landlord denied that he had been carrying out any renovations in the tenant's unit, and that testimony was corroborated by the landlord's witness, ■■■. There was also no evidence presented by the tenant, e.g., a rental agreement or a text-message exchange, to establish that she had been promised the exclusive right to use the bathroom in the stairwell.
30. I was also not convinced that the tenant had established that the landlord is responsible for compensating her for half of her wages during the period from March to May 2021. No concrete evidence was submitted at the hearing to establish that the tenant had been working 50% longer on her work than she otherwise would have, and it was the corroborated testimony of the landlord that

he had accommodated her, whenever she requested, and ceased his work so that she could have silence during her special meetings. I also agree with the landlord that the tenant had failed to establish that there was any connection between her bout of high blood pressure and any action of the part of the landlord. For these reasons, the tenant's claim does not succeed.

Decision

31. The tenant's claim for compensation for inconvenience does not succeed.

Issue 5: Hearing Expenses

32. With her application, the tenant submitted a hearing expense claim form, and a receipt for \$20.00 for the costs of filing this application, a receipt for \$13.44 for the costs of sending the application to the landlord by registered mail, and a receipt for \$57.50 for the costs of having her affidavit of service notarized.

33. With respect the fee for notarization, as notaries and commissioners for oaths are not permitted to charge fees for that service, policy with this Section is that that is therefore not a claimable expense. Regarding the filing fee, it is also policy with this Section that that expense is only claimable where the ordered award is greater than the amount of the security deposit. As the tenant's claim for compensation for inconvenience has not succeeded, she is only awarded the refund of her security deposit, so that claim also fails. That leaves the costs of registered mail.

Decision

34. The tenant's claim for hearing expenses succeeds in the amount of \$13.44.

Summary of Decision

35. The tenant is entitled to the following:

- Refund of Security Deposit\$200.00
- Hearing Expenses.....\$13.44

- Total Owing to Landlord\$213.44

12 September 2022

Date

