

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0441-05

John. R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:15 PM on 01 February 2022 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 a security deposit in the amount of \$975.00.

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*.

Preliminary Matters

6. The landlord was not present or represented at the hearing and I was unable to reach her 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 she has

been properly served. The landlord submitted an affidavit with his application stating that he had served the landlord with notice of the hearing, by e-mail, on 14 October 2021, and a copy of that e-mail was also submitted with his application. 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 her absence.

Issue 1: Refund of Security Deposit - \$975.00

Relevant Submissions

7. The tenant stated that he had entered into a 1-year, fixed-term lease with the landlord's property management company on 01 July 2019 and a copy of that agreement was submitted with his application. When that lease expired, the tenant entered into a new lease, this time with the landlord, for another year, and a copy of that second lease was also submitted with the application.
8. The agreed rent was set at \$1300.00 per month and it is acknowledged in the second agreement that the tenant had paid a security deposit of \$975.00 on 01 June 2019.
9. The tenant vacated the property when this second lease expired on 30 June 2021.
10. The tenant testified that he had not caused any damage at the rental unit during his tenancy, but despite his repeated requests that the landlord return the security deposit to him, she has failed to do so. He also testified that he had not entered into any written agreement with her on the disposition of that deposit.
11. The tenant is seeking an order for a refund 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).

(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 the tenant's claim that he had paid \$975.00 at the beginning of her tenancy as a security deposit and that it 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. As the landlord has not made an application to the Director of Residential Tenancies to determine the disposition of the security deposit, she 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 \$975.00.

23 August 2022

Date

