

Residential Tenancies Tribunal

Application [REDACTED]

Decision 2021-0403-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:15 pm on 17 January 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 in the hearing.

Issues before the Tribunal

3. The tenant is seeking an order for a refund of the security deposit in the amount of \$375.00.

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 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 testified that he had sent the application and notice of the hearing to the landlord, by e-mail, on 21 December 2021, and a copy of that e-mail was submitted with his application. As the landlord was properly served, and any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in his absence.

Issue 1: Refund of Security Deposit - \$375.00

Relevant Submissions

7. The tenant testified that his family resides in [REDACTED] and that he is a student at [REDACTED]. Prior to the 2021 school term, the tenant found an online rental ad that looked desirable and advertised a 5-7 minute walking distance to the university ([REDACTED] #4). Based on this claimed distance, the tenant participated in a video call with the landlord, where he was shown the rental premises and decided verbally to proceed with the rental agreement.
8. After that walkthrough was conducted, it was agreed that the tenant would rent the room, at a monthly rental rate of \$650.00 commencing 01 September 2021. On 27 August 2021, the tenant sent the landlord a security deposit of \$375.00, by e-Transfer. A screenshot of the successful e-Transfer was submitted with his application. ([REDACTED] #5)
9. The tenant testified that at the end of August 2021, he visited the rental premises and found that the actual walking distance from the university was closer to 18 minutes. He testified, that as a student with no car, the supposed walking distance of 5-7 minutes was the "biggest deciding factor" for why he proceeded with a verbal agreement to rent from the landlord.
10. Once he realized that the advertised distance was incorrect, the tenant testified that he refused to sign a written rental agreement and he informed the landlord that he would not be moving in because of "false advertising".
11. The tenant stated that he attempted to negotiate the return of the \$375.00 security deposit that he had paid but the landlord stopped responding to his communications.
12. The tenant testified that he did not enter into any written agreement with the landlord concerning the disposition of the security deposit.

Analysis

13. 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.

...

(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.

14. Although the tenant had not signed the written lease the landlord had sent to him, I find that he had verbally agreed to rent the unit from the landlord after he conducted the video walkthrough. In that respect, I find that there was a landlord-tenant relationship between the parties.
15. I also accept the tenant's evidence which shows that he had paid a security deposit of \$375.00 and that that deposit has not been returned to him.
16. As the landlord and tenant had not entered into any written agreement on the disposition of that deposit, and as the landlord had not made an application to the Director of Residential Tenancies to determine its disposition, I find that, 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 \$375.00.

30 May 2022

Date

