

## Residential Tenancies Tribunal

Decision 20-0045-05

John. R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 9:07 am on 19 August 2020 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant”, participated in the hearing. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as “the landlords”, 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 \$362.50.

### 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 landlords were not present or represented at the hearing and there was no number where they could be reached 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 respondents’ absence so long as they have been properly served. The landlord

testified that she sent the notice of the hearing to the landlords by Xpresspost and according to the associated tracking history, it was delivered to them on 06 August 2020. They have had 12 days to provide a response. As the landlords were properly served, and as any further delay in these proceedings would unfairly disadvantage the tenant, I proceeded with the hearing in their absence.

## **Issue 1: Refund of Security Deposit - \$362.50**

### **Relevant Submissions**

7. The tenant stated that she had entered into a monthly rental agreement with the landlords on 01 July 2017. The agreed rent was set at \$725.00 and the tenant testified that she had paid a security deposit of \$362.50.
8. She stated that on 01 December 2019 she informed that landlords that she was terminating her rental agreement with them and she moved out on 31 December 2019.
9. The tenant complained that the landlords 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 landlords on the disposition of that security deposit.

### **Analysis**

10. 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.

11. I accept the tenant's claim that she had paid a security deposit of \$362.50 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 landlords on the disposition of that deposit.
12. As the landlords have not made application to the Director of Residential Tenancies to determine the disposition of the security deposit, they are required, as per subsection 14.(12) of the Act, to refund the full amount of the security deposit to the tenant.

### Decision

13. The tenant's claim for refund of the security deposit succeeds in the amount of \$362.50.

### Issue 2: Hearing Expenses

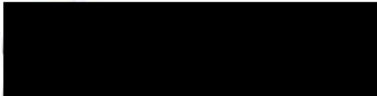
14. The tenant submitted a photograph of a receipt showing that she was charged \$20.00 to have a Commissioner for Oaths notarize her affidavit of service. As the tenant's claim has been successful, the landlords shall pay this hearing expense.

### Summary of Decision

15. The tenant is entitled to the following:
  - a) Refund of Security Deposit .....\$362.50
  - b) Hearing Expenses.....\$20.00
  - c) Total Owing to Tenant.....\$382.50

21 October 2020

Date

  
John R. Cook  
Residential Tenancies Tribunal