

## Residential Tenancies Tribunal

Decision 20-0047-03

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 9:07 am on 05 November 2020 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”, also participated.

### Issues before the Tribunal

3. The tenant is seeking the following:
  - An order for a refund of the security deposit in the amount of \$400.00,
  - An order for a refund of rent in the amount of \$700.00, and
  - An order for a payment of \$40.00 in compensation for moving expenses.

### 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 sections 10, 14 and 20 of the *Residential Tenancies Act, 2018*.

### Preliminary Matters

6. The landlord called the following witness:
  - [REDACTED] (“[REDACTED]”) – superintendent at [REDACTED]

## **Issue 1: Security Deposit - \$400.00**

### **Relevant Submissions**

#### The Tenants' Position

7. The tenant stated that he had entered into a monthly rental agreement with the landlord on 25 June 2020 and he moved into the unit on 07 July 2020. The agreed rent was set at \$700.00 per month and the tenant stated that he had paid a security deposit of \$400.00.
8. With his application, the tenant submitted a copy of an INTERAC e-Transfer receipt showing that he had paid \$1100.00 to the landlord on 25 June 2020. He stated that \$700.00 was for rent for July 2020 and \$400.00 was for a security deposit.
9. The tenant stated that he was unsatisfied with the apartment when he took possession on 07 July 2020 and he only resided there for 1 night. On 08 July 2020 he contacted [REDACTED] by telephone and informed her that he was vacating and they agreed that the keys could be left in a drawer in the apartment.
10. The tenant stated that the landlord did not return the security deposit to him after he moved out and he testified that he had not entered into any written agreement with him on its disposition.
11. The tenant is seeking an order for a return of the security deposit in the amount of \$400.00.

#### The Landlord's Position

12. The landlord stated that the agreed rent was set at \$650.00 per month, not \$700.00, and he claimed that \$50.00 of the \$1100.00 paid to him by the tenant on 25 June 2020 was paid to him in order to hold the apartment for the tenant.
13. The landlord stated that the tenant did not return the keys to him after he had vacated and he therefore considered that the tenant retained possession of the apartment up to 31 July 2020.
14. The landlord acknowledged that after the tenant had moved out that he had not entered into any written agreement with him on the disposition of the security deposit. However, he claimed that there was a written rental agreement which outlined out how that security deposit would be disposed of. The tenant had not signed that agreement and no copy was submitted into evidence.

## Analysis

15. Section 14 of the *Residential Tenancies Act, 2018* deals with security deposits, and the relevant subsections state:

### **Security deposit**

*14. (2) Where a landlord receives from a tenant money or other value that is more than the amount of rent payable in respect of the residential premises, the money or value shall be considered to be a security deposit.*

...

*(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.*

16. I accept the landlord's claim \$50.00 of the \$1100.00 paid to him on 25 June 2002 amount was a holding deposit and that the agreed monthly rent was set at \$650.00.
17. However, the *Residential Tenancies Act, 2018* makes no reference to "holding deposits" and, as quoted above, s. 14.(2) states that any money paid to a landlord that is in excess of the payable rent is deemed to be a "security deposit". As \$650.00 of the \$1100.00 paid on 25 June 2020 was for rent for July 2020, the totality of the remaining \$450.00 is considered to be the security deposit.

18. I find that the tenant and the landlord had not entered into any written agreement on the disposition of the security deposit after the tenancy ended. I also find that, as the tenant had not signed any written rental agreement or lease, their agreement was therefore merely verbal and any provisions regarding the security deposit in the unsigned lease mentioned by the landlord are not binding on the tenant.
19. As the landlord has not made an application to the Director of Residential Tenancies to determine the disposition of the security deposit, he is required, as per subsection 14.(12), to refund the full amount of the security deposit to the tenant.

## **Decision**

20. The tenant's claim for refund of the security deposit succeeds in the amount of \$450.00.

## **Issue 2: Refund of Rent - \$700.00**

### **Relevant Submissions**

#### The Tenant's Position

21. The tenant stated that the apartment that he was provided with was "unfit" and with his application he submitted 8 photographs showing its condition on the day he moved in. He pointed out that the unit had not been properly cleaned before he took possession and he complained that there was a smell of cigarettes in the apartment.
22. He also stated that the toilet in the unit was leaking and that he was only supplied with a microwave as a means of preparing meals. He testified that he was not supplied with an oven or stove and he also complained that he was only provided with a mini-fridge.
23. Because of the condition of the property, the tenant claimed that he could not reside at the apartment and on the day after he moved in he contacted the superintendent, ■■■, and informed her that he was vacating.
24. The tenant stated that it was because of the poor condition of the apartment that he was required to vacate so early and he argued that he was therefore entitled to a return of the rent that he had paid to the landlord for the period from 08 July to 31 July 2020.
25. He also argued that he was entitled to the costs he incurred in moving. He is seeking \$40.00 in compensation for the fuel his car consumed moving to a new unit 6 km from this apartment. No receipts were submitted at the hearing.

## The Landlord's Position

26. The landlord claimed that all the apartments at the complex are thoroughly cleaned before new tenants move in. He also stated that although only half of his apartments are equipped with full-sized stoves, the remaining apartments, including the tenant's, have hot plates for cooking.
27. ■ corroborated the landlord's claim that the unit was clean before the tenant moved in and she stated that she also believed that the tenant had been supplied with a hot plate.
28. The landlord argued that if the tenant had discovered any deficiencies at the unit, he ought to have contacted the superintendent and these issues would have been immediately addressed. He pointed out that, instead of taking this course of action, the tenant moved out of the property without giving the landlord any notice. He argued that as he had not received any notice from the tenant that their agreement was terminated, he was responsible for rent up to 31 July 2020.
29. Regarding the moving costs the tenant is seeking here, the landlord pointed out that the unit was fully furnished and that the tenant had almost nothing to move to his new place. He argued that it would not cost \$40.00 to drive those 6 km.

## **Analysis**

30. The tenant's photographic evidence does show that the rental unit was not cleaned when he moved in and his photographs do show that the apartment appears to have suffered significant wear.
31. Where a landlord fails to maintain premises in a good state of repair, he is considered to be in breach of statutory condition 1, set out in section 10 of the *Residential Tenancies Act, 2018*, which states:

### ***Statutory conditions***

**10. (1) *Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:***

#### ***1. Obligation of the Landlord -***

***(a) The Landlord shall maintain the residential premises in a good state of repair and fit for habitation during the tenancy and shall comply with a law respecting health, safety or housing.***

*(b) Paragraph (a) applies regardless of whether, when the landlord and tenant entered into the rental agreement, the tenant had knowledge of a state of non-repair, unfitness for habitation or contravention of a law respecting health, safety or housing in the residential premises.*

32. I also accept the tenant's testimony that there was no stove or hot plate in that apartment and I do not see these appliances in his submitted photographs. In that respect, I also find that the landlord was in breach of the verbal rental agreement that they had entered into.
33. Section 20 of the Act states:

***Notice where material term of agreement contravened***

**20.** *(1) Notwithstanding subsection 18(1) and paragraph 18(3)(a), where a landlord contravenes a material term of a rental agreement, the tenant may give the landlord written notice of the contravention, and if the landlord fails to remedy the contravention within a reasonable time after the notice has been served, the tenant may give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises.*

...

*(3) Where the tenant gives a landlord notice under subsection (1) or the landlord gives a tenant notice under subsection (2) that a rental agreement is terminated, the notice shall be given*

*(a) not less than 7 days before the end of a rental period where the residential premises is rented from week to week; and*

*(b) not less than one month before the end of a rental period where the residential premises is*

*(i) rented from month to month,*

*(ii) rented for a fixed term, or*

*(iii) a site for a mobile home.*

*(4) In addition to the requirements under section 34, a notice under this section shall*

*(a) be signed by the person providing the notice;*

*(b) be given not later than the first day of a rental period;*

*(c) state the date, which shall be the last day of a rental period, on which the rental agreement terminates and the tenant intends to vacate the residential premises or the date by which the tenant is required to vacate the residential premises; and*

*(d) be served in accordance with section 35.*

- 34. That is, where a landlord fails to live up to his statutory obligations, or where he fails to fulfil his obligations, as set out in the rental agreement, the *Act* states that the tenant must first give the landlord written notice that he is in breach of their agreement and then provide him with enough time to remedy the breach. If the landlord fails to remedy the breach within that timeframe, the tenant may then issue the landlord a 1-month, written termination notice.
- 35. The tenant did not give the landlord a written notice that he was in breach of their agreement nor did he give him any written, 1-month notice that their agreement was terminated. Rather, the tenant moved out after 1 day with only a phone call to the superintendent, [REDACTED].
- 36. As the tenant had not given the landlord any notice of any breach of their agreement, as he had not given the landlord any chance to rectify the issues with the apartment, and as he had not given him any written notice of termination, I find that he had not properly terminated this agreement and that he was still, therefore, liable for his obligations as a tenant, including his obligation to pay rent.

**Decision**

- 37. The tenant's claim for a refund of rent does not succeed.
- 38. The tenant's claim for his moving costs does not succeed.

**Summary of Decision**

- 39. The tenant is entitled to the following:
  - a) Refund of Security Deposit..... \$450.00

26 February 2021  
\_\_\_\_\_  
Date

[REDACTED]  
\_\_\_\_\_  
John R. Cook  
Residential Tenancies Tribunal