

Residential Tenancies Tribunal

Decision 20-0270-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:13 am on 08 September 2020 via teleconference.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as “tenant1” and “tenant2”, respectively, participated in the hearing. The respondent, [REDACTED], hereinafter referred to as “the landlord”, also participated.

Issues before the Tribunal

3. The tenants are seeking an order for a refund of the security deposit in the amount of \$875.00 and a refund of rent in the amount of \$450.00.

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 sections 14 and 16 of the *Residential Tenancies Act, 2018*.

Issue 1: Security Deposit - \$875.00

Relevant Submissions

The Tenants' Position

6. Tenant1 stated that she had entered into a 6-month, fixed-term, rental agreement

with the landlord, commencing 15 October 2018, and a copy of the first page of that lease was submitted with their application.

7. Although it is not indicated on the first page of the lease, tenant1 stated that the agreed rent was set at \$1100.00 and she claimed that it was agreed that they would pay a pro-rated rent for October 2018. She also testified that they had agreed to pay a security deposit of \$875.00, equivalent to 80% of the monthly rent.
8. The tenants submitted copies of their banking records at the hearing showing the INTERAC e-Transfers they had sent to ■■■, who collects the rent on the landlord's behalf, during October 2018. These records show that on 14 October 2018 tenant1 had sent ■■■ \$575.00 and she testified that that payment was for the security deposit. Their records also show that in late October 2018 tenant2 had sent \$1400.00 to ■■■. She claimed that \$1100.00 of that amount was a payment for rent for November 2018 while the remaining \$300.00 was her share of the security deposit.
9. According to the tenants' calculations, the total security deposit paid by them amounted to \$875.00 (\$575.00 + \$300.00). Tenant1 stated that the landlord had not returned that deposit to them after they vacated the property on 31 October 2019 and she testified that she had not entered into any written agreement with her on its disposition.
10. The tenants are seeking an order for a refund of the security deposit in the amount of \$875.00.

The Landlord's Position

11. The landlord had a very different account of the payments she had received from the tenants. She claimed that on her copy of the lease, the tenants had indicated with their initials any changes or agreements they had made with the landlord. She claimed that in her lease, it states that the tenants were supposed to pay a deposit of \$600.00, but they had not initialed that part of the lease because they did not have the money to pay for the security deposit when they first moved in. The landlord's copy of the lease was not submitted at the hearing.
12. With respect to the 2 e-Transfers, referenced in paragraph 8, above, the landlord claimed that these were payments to her for furniture she had sold to the tenants. She testified that she had sold them 2 bed sets, at a price of \$425.00 and \$350.00, respectively, as well a table and chair set, including a hutch, for another \$350.00. She also claimed that the mother of one of the tenants had paid her \$25.00 for a table. The landlord acknowledged that \$1100.00 of the \$1400.00 from tenant2 was for rent for November 2018, but she claimed that the remaining \$300.00 and the payment of \$575.00 from 14 October 2018 were for the costs of purchasing the furniture. She also claimed that she would not have required the tenants to pay an 80% security deposit.

13. The landlord did state that the tenants had paid her \$550.00, by e-Transfer, for half of the rent for October 2018, but she denied that they had paid a security deposit during that month. Instead, the landlord had agreed to let the tenants pay the security deposit in monthly installments of \$75.00, beginning November 2018. She testified that she had received 6 such payments for a total security deposit of \$450.00 and later in the hearing she testified that she was holding a deposit of \$550.00. No record of these payments was submitted at the hearing and the landlord testified that she had not issued any receipts to the tenants.
14. The landlord stated that she had not returned the deposit to the tenants after they had vacated because they had caused some damage to the property and it had not been properly cleaned. She also complained that some of her furniture had been removed without her permission.

Analysis

15. 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.

16. It is not disputed that the landlord had not returned the security deposit to the tenants after they had vacated and it is also not disputed that the tenants and the landlord had not entered into a written agreement on the disposition of that deposit. The landlord has also failed to make application to the Director as required under section 14.(11).
17. As the landlord has not made an application to the Director of Residential Tenancies to determine its disposition, she is required, as per subsection 14.(12), to refund the full amount of the security deposit to the tenant.
18. The problem, though, is that there is no consensus among the parties as to how much of a deposit had been paid. No receipts were submitted at the hearing, there was no indication that the landlord had provided a receipt to the tenants for the security deposit, for rent, or for their purchases of furniture, and the pages of the lease showing acknowledgment of receipt of the deposit were not submitted either.
19. Furthermore, although the tenants have established that they had paid \$875.00 to the landlord during October 2018, there is no evidence showing what those payments were made for and no e-mail receipts were submitted at the hearing indicating whether the tenants had included any memos or messages in these e-Transfers.
20. As it is the tenants who are alleging that they had paid a security deposit of \$875.00 to the landlord, the burden of proof falls to them to establish, on the balance of probabilities, that such a payment had been made. I conclude that they had failed to meet that burden and their assertion that they had paid \$875.00 is just as probable as the landlord's that they had paid \$550.00. There was insufficient evidence presented at the hearing to tip the scales either way. Accordingly, regarding the amount of the deposit that had been paid, I have to side with the landlord.

Decision

21. The tenants' claim for refund of the security deposit succeeds in the amount of \$550.00.

Issue 2: Refund of Rent - \$450.00

Relevant Submissions

The Tenant's Position

22. Tenant1 stated that the lease that they had signed was originally supposed to run for 6 months. The tenants decided to continue renting from the landlord after the lease had expired, but tenant1 stated that [REDACTED] informed them that if they wished

to stay on at the unit, their rent would be increased to \$1175.00 per month, instead of \$1100.00.

23. Tenant1 stated that they had agreed to pay that amount and she submitted copies of her banking records showing that she had paid that extra \$75.00 for the months of April, June, July, August, September and October 2019, a total 6 months.
24. Tenant1 stated that it has since come to her attention that the landlord was not permitted to increase their rent during this tenancy and she is seeking a refund of that extra \$450.00 in rent she had paid to the landlord during those 6 months.

The Landlord's Position

25. The landlord acknowledged that she had increased the tenants' rent during the period cited by tenant1.
26. She claimed that she had increased the rent because the tenants had been renting out rooms at the rented premises and had even placed a tenant in the basement apartment. She stated that only tenant1 and tenant2 were permitted to reside in the premises and she had not given them permission to sublet the other rooms. She also pointed out that the basement apartment was not a part of the original lease, and the tenants had only been given to use that area for storage.

Analysis

27. The relevant subsections of section 16 of the *Residential Tenancies Act, 2018* state:

Rental increase

16. (1) *Notwithstanding another Act, agreement, declaration, waiver or statement to the contrary, a landlord shall not increase the amount of rent payable by a tenant,*

(a) where the residential premises is rented from week to week or month to month, more than once in a 12 month period;

(b) where the residential premises is rented for a fixed term, during the term of the rental agreement; or

(c) where a tenant continues to use or occupy the residential premises after a fixed term has expired, more than once in a 12 month period.

(2) Notwithstanding subsection (1), a landlord shall not increase the amount of rent payable by a tenant during the 12 month period immediately following the commencement of the rental agreement.

...

(7) Notwithstanding subsection (1), where the landlord and tenant agree in writing, a landlord may increase the amount of rent payable by a tenant for the residential premises without notice under subsection (3) where the increase is due to the provision of a service, facility, privilege or benefit, including a parking space, that was not previously provided under the rental agreement.

- 28. According to s. 16.(2), quoted above, the landlord was not permitted to increase the rent payable by the tenants during the first 12 months of their tenancy. That is, rent could not be increased prior to 15 October 2019.
- 29. Although it is not disputed that the tenants had been subletting rooms at the rented premises, no evidence was submitted by the landlord to establish that because they had been allowed that privilege the tenants had agreed, in writing, to that rental increase, as required by s. 16.(7).
- 30. Therefore, I have to conclude then that the rental increase which was implemented in April 2019 was not proper and the landlord was not permitted to collect that extra \$75.00 per month for those 6 months. As such, the tenants' claim succeeds.

Decision

- 31. The tenants' claim for a refund of rent succeeds in the amount of \$450.00.


Summary of Decision

- 32. The tenants are entitled to the following:

| | |
|------------------------------------|------------------|
| a) Refund of Security Deposit..... | \$550.00 |
| b) Rebate of Rent | \$450.00 |
| c) Total Owing to Tenants | <u>\$1000.00</u> |

18 November 2020

Date


John R. Cook
Residential Tenancies Tribunal